HOUSE HEALTH AND WELFARE COMMITTEE

ADMINISTRATIVE RULES REVIEW

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2007 Legislative Session

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IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.13 - PRIOR AUTHORIZATION FOR BEHAVIORAL HEALTH SERVICES

DOCKET NO. 16-0313-0601 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, and 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Idaho Medicaid Simplification Act."

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, page 467.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Pam Mason at (208) 364-1863.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(g), and 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Medicaid Modernization and Simplification Act."

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

DEPARTMENT OF HEALTH & WELFARE — **Docket No. 16-0313-0601**
Prior Authorization for Bhavioral Health Services — **PENDING RULE**

Date:	**Wednesday, August 16, 2006**	**Thursday, August 17, 2006**	**Tuesday, August 22, 2006**
Time:	**7:00 p.m.**	**7:00 p.m.**	**7:00 p.m.**
Place:	**Idaho Falls Public Library** **457 Broadway** **Idaho Falls, ID** **Phone: (208) 612-8455**	**Coeur d'Alene Inn** **Hayden Conference Room** **506 W Appleway Ave.** **Coeur d'Alene, ID**	**DHW - Region IV Office** **1720 Westgate Dr.** **Suite D, Room 119** **Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

This entire chapter of rules is being repealed. The text of the rewritten chapter IDAPA 16.03.13, "Consumer-Directed Services," appears under Docket No. 16-0313-0602 and is being published simultaneously with this docket.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Pam Mason at (208) 364-1863.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 23, 2006.

DATED this 30th day of June, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.03.13 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.13 - CONSUMER-DIRECTED SERVICES

DOCKET NO. 16-0313-0602 (CHAPTER REWRITE)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: **The effective date of the amendment to the temporary rule is October 1, 2006.** This pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-203(g), 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Idaho Medicaid Simplification Act," SB1417 (2006), and HCR 50 (2006).

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendments to these rules are the result of comments from Legislative Services Office, public hearings and comments received during the comment period, and from within the Department. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule. The following are specific changes made to the temporary and proposed rules:

1. **Section 009 - The compliance requirements for criminal history and background checks for community support workers were clarified and the "Availability to Work or Provide Services" section was re-written to clearly state when community support workers may provide services on a provisional basis.**
2. **Section 010 - A definition for the term "Goods" was added to distinguish goods from services.**
3. **Section 120 - The participant's responsibilities regarding the negotiation of rates was revised and now states that the negotiated rate not exceed the prevailing market rate. This change helps protect the participant from exploitation.**
4. **Section 135 - Language was clarified dealing with the support broker's limitations on receiving financial benefit based on the participant's decisions. This change will help assure that the support broker remains an objective third party.**
5. **Section 136 - The duties of a support broker were expanded by adding a requirement that a Department- approved form be completed showing that the support broker has provided education and counseling to the participant when he chooses to waive a criminal history check. The amount of time that a support broker has to inform a**

participant that the support broker is going to end services was increased from fifteen (15) days to thirty (30) days. Also, the subsection that outlined "Optional" support broker duties was amended to be "Additional" duties and they are now mandatory duties when the participant requests them.

6. **Section 140 - Language was added to clarify that a legal guardian may be a paid community support worker and lists the limitations of that payment.**
7. **Section 150 - This section was amended by adding the requirement that if a criminal history check has been waived, documentation must be provided on a Department-approved form.**
8. **Section 160 - Language was added to this section to clarify that there will be no gap in services when the participant switches between traditional services and the new Self-Directed Community Supports (SDCS) program. The revisions also clarify that a participant of the SDCS program may live with participants of traditional Medicaid services if they choose.**
9. **Section 180 - Language has been added to require that a non-family member be included in the circle of supports when the legal guardian is a paid community support worker. For the purpose of this chapter, the meaning of "family member" was defined.**
10. **Section 200 - This section dealing with quality assurance was strengthened in its review of criminal history check waivers and reviews of services for participants who have legal guardians as paid community support workers.**

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the temporary and proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 468 through 481.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact David Simnitt at (208) 364-1992.

DATED this 8th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is October 1, 2006.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is

authorized pursuant to Sections 56-202(b), 56-203(g), 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Idaho Medicaid Simplification Act," SB1417 (2006), and HCR 50 (2006).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date:	**Wednesday, August 16, 2006**	**Thursday, August 17, 2006**	**Tuesday, August 22, 2006**
Time:	**7:00 p.m.**	**7:00 p.m.**	**7:00 p.m.**
Place:	**Idaho Falls Public Library 457 Broadway Idaho Falls, ID Phone: (208) 612-8455**	**Coeur d'Alene Inn Hayden Conference Room 506 W Appleway Ave. Coeur d'Alene, ID**	**DHW - Region IV Office 1720 Westgate Dr. Suite D, Room 119 Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rulemaking:

In order to achieve better health outcomes and to help slow the rate of growth in Medicaid costs, this chapter of rules is being repealed and rewritten to implement the Medicaid Modernization and Simplification Act, HB 776, approved by the 2006 Legislature. This legislation requires the Medicaid program to be restructured so as to reflect benefit plans that are based on participants' health needs.

To accomplish this, IDAPA 16.03.13 is being replaced with a new chapter entitled "Consumer-Directed Services." This new chapter will enable participants, receiving services through the current developmental disabilities program, to have greater freedom to manage their own care. Placing the self-directed services program into its own chapter of rule will help participants, providers, and other interested parties conveniently access the rules and allow for easy expansion when needed.

This new chapter will contain the benefit services and requirements necessary for those Medicaid participants who qualify for the developmental disabilities waiver and want to choose and manage their own care.

The rules for prior authorization for behavioral health services that currently reside under Title 03 and Chapter 13 is being moved into the new chapter to be entitled "Medicaid Enhanced Plan Benefits" to better serve those participants and their special health needs.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is being done to comply with deadlines in amendments to governing law or federal programs and confers a benefit.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on

the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact David Simnitt at (208) 364-1992.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 29th day of June, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 16
TITLE 03
CHAPTER 13

16.03.13 - CONSUMER-DIRECTED SERVICES

000. LEGAL AUTHORITY.
In accordance with Sections 56-202, 56-203, and Sections 56-250 through 257, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to adopt and enforce rules for the provision of consumer-directed services. (10-1-06)T

001. TITLE AND SCOPE.

01. Title. These rules will be cited as IDAPA 16.03.13, "Consumer-Directed Services." (10-1-06)T

02. Scope. Self-Directed Community Supports (SDCS) is a flexible program option

for participants eligible for the Home and Community Based Services - Developmental Disabilities (HCBS-DD) waiver. The SDCS option allows the eligible participant to: choose the type and frequency of supports he wants, negotiate the rate of payment, and hire the person or agency he prefers to provide those supports. (10-1-06)T

002. WRITTEN INTERPRETATIONS.
In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules. (10-1-06)T

003. ADMINISTRATIVE APPEALS.
All administrative appeals are governed by provisions of IDAPA 16.05.03, "Contested Case Proceedings and Declaratory Rulings." (10-1-06)T

004. INCORPORATION BY REFERENCE.
No documents have been incorporated by reference into these rules. (10-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (10-1-06)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (10-1-06)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (10-1-06)T

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (10-1-06)T

05. Internet Website. The Department's internet website is found at: www.healthandwelfare.idaho.gov. (10-1-06)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (10-1-06)T

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (10-1-06)T

007. (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.
In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse and Misconduct." (10-1-06)T

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History Check. The Fiscal Employer Agent must verify that each support broker and community support worker, whose criminal history check has not been waived by participant, has complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." (10-1-06)T

01. Compliance With Department Criminal History Check. The fiscal employer agent must verify that each support broker and community support worker, whose criminal history check has not been waived by *the* participant, has complied with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." *When a participant chooses to waive the criminal history check requirement for a community support worker, the waiver must be completed in accordance with Section 150 of these rules.* ~~*(10-1-06)T*~~(10-1-06)T

02. Availability to Work or Provide Service. ~~*Certain providers are allowed to provide services after the Department has received the self-declaration and fingerprinting, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications of these providers.*~~ *Participants, at their discretion, may review the completed application and allow the community support worker to provide services on a provisional basis if no disqualifying offenses listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks" are disclosed.* ~~*(10-1-06)T*~~(10-1-06)T

04. Notice of Pending Investigations or Charges. Once criminal history clearances have been received, any charges or investigations for abuse, neglect or exploitation of any vulnerable adult or child, criminal charges, or substantiated adult protection or child protection complaints, must be immediately reported by the worker to the participant and by the participant to the Department. (10-1-06)T

05. Providers Subject to Criminal History Check Requirements. A community support worker, who has not had the requirement waived by the participant, and a support broker as defined in Section 010 of these rules. (10-1-06)T

010. DEFINITIONS.

01. Circle of Supports. People who encourage and care about the participant and provide unpaid supports. (10-1-06)T

02. Community Support Worker ~~*(CSW)*~~. An individual, agency, or vendor selected and paid by the participant to provide community support worker services. ~~*(10-1-06)T*~~(10-1-06)T

03. Community Support Worker Services. Community support worker services are

those identified supports listed in Section 110 of these rules. (10-1-06)T

~~**04. Guiding Principles for the SDCS Option**. *Self-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles:* (10-1-06)T~~

~~**a.** *Freedom for the participant to make choices and plan his own life;* (10-1-06)T~~

~~**b.** *Authority for the participant to control resources allocated to him to acquire needed supports;* (10-1-06)T~~

~~**c.** *Opportunity for the participant to choose his own supports;* (10-1-06)T~~

~~**d.** *Responsibility for the participant to make choices and take responsibility for the result of those choices; and* (10-1-06)T~~

~~**e.** *Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community.* (10-1-06)T~~

0~~5~~4. **Financial Management Services** ~~*(FMS)*~~. Services provided by a fiscal employer agent that include: ~~(10-1-06)T~~(10-1-06)T

a. Financial guidance and support to the participant by tracking individual expenditures and monitoring overall budgets; (10-1-06)T

b. Performing payroll services; and (10-1-06)T

c. Handling billing and employment related documentation responsibilities. (10-1-06)T

0~~6~~5. **Fiscal Employer Agent**. An agency that provides Financial Management Services ~~*(FMS)*~~ to participants who have chosen the SDCS option. ~~(10-1-06)T~~(10-1-06)T

***06. Goods**. Tangible products or merchandise that are authorized on the support and spending plan.* *(10-1-06)T*

***07. Guiding Principles for the SDCS Option**. Self-Directed Community Supports is based upon the concept of self-determination and has the following guiding principles:* *(10-1-06)T*

***a.** Freedom for the participant to make choices and plan his own life;* *(10-1-06)T*

***b.** Authority for the participant to control resources allocated to him to acquire needed supports;* *(10-1-06)T*

***c.** Opportunity for the participant to choose his own supports;* *(10-1-06)T*

d. Responsibility for the participant to make choices and take responsibility for the result of those choices; and *(10-1-06)T*

e. Shared responsibility between the participant and his community to help the participant become an involved and contributing member of that community. *(10-1-06)T*

0~~7~~8. Supports. Services provided for a participant, or a person who provides a support service. A support service may be a paid service provided by a community support worker, or an unpaid service provided by a natural support, such as a family member, a friend, neighbor, or other volunteer. A person who provides a support service for pay is a paid support. A person who provides a volunteer support service is a natural support. (10-1-06)T

0~~8~~9. Support Broker. An individual who advocates on behalf of the participant and who is hired by the participant to provide support broker Services. (10-1-06)T

~~09~~10. Support Broker Services. Services provided by a support broker to assist the participant with planning, negotiating, and budgeting. (10-1-06)T

011. -- 099. (RESERVED).

100. SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) OPTION.
The SDCS option requires the participant to have a Support Broker to assist the participant to make informed choices, participate in a person-centered planning process, and become skilled at managing his own supports. The participant must use a Fiscal Employer Agent to provide Financial Management Services (FMS) for payroll and reporting functions. (10-1-06)T

101. ELIGIBILITY.

01. Determination of Medicaid and Home and Community Based Services - DD Requirements. In order to choose the SDCS option, the participant must first be determined Medicaid-eligible and must be determined to meet existing (HCBS-DD) waiver program requirements as outlined in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (10-1-06)T

02. Participant Agreement Form. The participant, and his legal representative, if one exists, must agree in writing using a Department-approved form to the following: (10-1-06)T

a. Accept the guiding principles for the SDCS option, as defined in Section 010 of these rules; (10-1-06)T

b. Agree to meet the participant responsibilities outlined in Section 120 of these rules; (10-1-06)T

c. Take responsibility for and accept potential risks, and any resulting consequences, for their support choices. (10-1-06)T

03. Legal Representative Agreement. The participant's legal representative, if one exists, must agree in writing to honor the choices of the participant as required by the guiding principles for the SDCS option. (10-1-06)T

102. -- 109. (RESERVED).

110. PAID SELF-DIRECTED COMMUNITY SUPPORTS.
The participant must purchase Financial Management Services and Support Broker Services to participate in the SDCS option. The participant must purchase goods and community supports through the Fiscal Employer Agent. (10-1-06)T

01. Fiscal Management Services. The Department will contract with a Fiscal Employer Agent, as defined in Section 010 of these rules, to provide Financial Management Services to a participant who chooses the self-directed option. (10-1-06)T

02. Support Broker. Support Broker Services are provided by a qualified Support Broker. (10-1-06)T

03. Community Support Worker. The Community Support Worker provides identified supports to the participant. If the identified support requires specific licensing or certification within the state of Idaho, the identified Community Support Worker must obtain the applicable license or certification. Identified supports include activities that address the participant's preference for: (10-1-06)T

a. Job support to help the participant secure and maintain employment or attain job advancement; (10-1-06)T

b. Personal support to help the participant maintain health, safety, and basic quality of life; (10-1-06)T

c. Relationship support to help the participant establish and maintain positive relationships with immediate family members, friends, spouse, or others in order to build a natural support network and community; (10-1-06)T

d. Emotional support to help the participant learn and practice behaviors consistent with his goals and wishes while minimizing interfering behaviors; (10-1-06)T

e. Learning support to help the participant learn new skills or improve existing skills that relate to his identified goals; (10-1-06)T

f. Transportation support to help the participant accomplish his identified goals; (10-1-06)T

g. Adaptive equipment identified in the participant's plan that meets a medical or accessibility need and promotes his increased independence; and (10-1-06)T

h. Skilled nursing support identified in the participant's plan that is within the scope of the Nurse Practice Act and is provided by a licensed professional (RN) nurse or licensed practical nurse (LPN) under the supervision of an RN, licensed to practice in Idaho. (10-1-06)T

111. -- 119. (RESERVED).

120. PARTICIPANT RESPONSIBILITIES.
With the assistance of the Support Broker and the legal representative, if one exists, the participant is responsible for the following: (10-1-06)T

01. Guiding Principles. Accepting and honoring the guiding principles for the SDCS option found in Section 010 of these rules. (10-1-06)T

02. Person-Centered Planning. Participating in the person-centered planning process in order to identify and document support and service needs, wants, and preferences. (10-1-06)T

03. Rates. Negotiating payment rates for all paid community supports he wants to purchase*, ensuring rates negotiated for supports and services do not exceed the prevailing market rate,* and including the details in the employment agreements. ~~*(10-1-06)T*~~(10-1-06)T

04. Agreements. Completing and implementing agreements for the Fiscal Employer Agent, the Support Broker and Community Support Workers and submitting the agreements to the Fiscal Employer Agent. These agreements must be submitted on Department-approved forms. (10-1-06)T

05. Agreement Detail. Ensuring that employment agreements specifically identify the type of support being purchased, the rate negotiated for the support, and the frequency and duration of the scheduled support or service. The participant is responsible for ensuring that each employment agreement: clearly identifies the qualifications needed to provide the support or service; includes a statement signed by the hired worker that he possesses the needed skills; and the signature of the participant that verifies the same. Additionally, each employment agreement will include statements that: the participant is the employer even though payment comes from a third party; employees are under the direction and control of the participant; and no employer-related claims will be filed against the Department. (10-1-06)T

06. Plan. Developing a comprehensive support and spending plan based on the information gathered during the person-centered planning. (10-1-06)T

07. Timesheets and Invoices. Reviewing and verifying that supports being billed were provided and indicating that he approves of the bill by signing the timesheet or invoice. (10-1-06)T

08. Quality Assurance and Improvement. Providing feedback to the best of his ability regarding his satisfaction with the supports he receives and the performance of his workers. (10-1-06)T

121. -- 129. (RESERVED).

130. FISCAL EMPLOYER AGENT REQUIREMENTS AND LIMITATIONS.

01. Requirements. The Fiscal Employer Agent must meet the requirements outlined in its contract with the Department. (10-1-06)T

02. Limitations. The Fiscal Employer Agent must not: (10-1-06)T

a. Provide any other direct services to the participant, to ensure there is no conflict of interest; or (10-1-06)T

b. Employ the guardian, parent, spouse, payee or conservator of the participant or have direct control over the participant's choice. (10-1-06)T

131. FISCAL EMPLOYER AGENT DUTIES AND RESPONSIBILITIES.
The fiscal employer agent performs Financial Management Services for each participant. Prior to providing Financial Management Services the participant and the fiscal employer agent must enter into a written agreement. Financial Management Services ~~*services*~~ include:
~~*(10-1-06)T*~~(10-1-06)T

01. Payroll and Accounting. Providing payroll and accounting supports to participants that have chosen the Self-Directed Community Supports option; (10-1-06)T

02. Financial Reporting. Performing financial reporting for employees of each participant. (10-1-06)T

03. Information Packet. Preparing and distributing a packet of information, including Department-approved forms for agreements, for the participant hiring his own staff. (10-1-06)T

04. Time Sheets and Invoices. Processing and paying time sheets for Community Support Workers and Support Brokers, as authorized by the participant, according to the participant's Department-authorized support and spending plan; (10-1-06)T

05. Taxes. Managing and processing payment of required state and federal employment taxes for the participant's community support worker~~*s*~~ and support broker~~*s*~~.
~~*(10-1-06)T*~~(10-1-06)T

06. Payments for Goods and Services. Processing and paying invoices for goods and services, as authorized by the participant, according to the participant's support and spending plan. (10-1-06)T

07. Spending Information. Providing each participant with reporting information that will assist the participant with managing the individualized budget. (10-1-06)T

08. Quality Assurance and Improvement. Participating in Department quality assurance activities. (10-1-06)T

132. -- 134. (RESERVED).

135. SUPPORT BROKER REQUIREMENTS AND LIMITATIONS.

01. Initial Application to Become a Support Broker. Individuals interested in becoming a Support Broker must complete the Department-approved application to document that he: (10-1-06)T

a. Is eighteen (18) years of age or older; (10-1-06)T

b. Has skills and knowledge typically gained by completing college courses or community classes or workshops that count toward a degree in the human services field; and (10-1-06)T

c. Has at least two (2) years verifiable experience with the target population and knowledge of services and resources in the developmental disabilities field. (10-1-06)T

02. Application Exam. Applicants that meet the minimum requirements outlined in this section will receive training materials and resources to prepare for the application exam. Applicants must earn a score of seventy percent (70%) or higher to pass. Applicants may take the exam up to three (3) times. After the third time, the applicant will not be allowed to retest for twelve (12) months from the date of the last exam. Applicants who pass the exam, and meet all other requirements outlined in these rules, will be eligible to enter into a provider agreement with the Department. (10-1-06)T

03. Required Ongoing Training. All Support Brokers must document a minimum of twelve (12) hours per year of ongoing, relevant training in the provision of Support Broker services. Up to six (6) hours of the required twelve (12) hours may be obtained through independent self-study. The remaining hours must consist of classroom training. (10-1-06)T

04. Termination. The Department may terminate the provider agreement when *the support broker*: ~~*(10-1-06)T*~~(10-1-06)T

a. ~~*The support broker*~~ Is no longer able to pass a criminal history background check as outlined in Section 009 of these rules. ~~*(10-1-06)T*~~(10-1-06)T

b. ~~*The support broker*~~ Puts the health or safety of the participant at risk by failing to perform job duties as outlined in the employment agreement. ~~*(10-1-06)T*~~(10-1-06)T

c. ~~*The support broker*~~ Does not receive and document the required ongoing training. ~~*(10-1-06)T*~~(10-1-06)T

05. Limitations. The Support Broker must not: (10-1-06)T

a. Provide or be employed by an agency that provides paid community supports under Section 150 of these rules to the same participant; and (10-1-06)T

b. Be the guardian, parent, spouse, payee, or conservator of the participant, or have direct control over the participant's choices. Additionally, the support broker must not be in a position to both influence a participant's decision making and *receive undue financial* benefit ~~*financially*~~ from the participant's decisions. ~~*(10-1-06)T*~~(10-1-06)T

136. SUPPORT BROKER DUTIES AND RESPONSIBILITIES.

01. Support Broker Initial Documentation. Prior to beginning employment for the participant, the Support Broker must complete the packet of information provided by the Fiscal Employer Agent and submit it to the Fiscal Employer Agent. This packet must include documentation of: (10-1-06)T

a. Support Broker application approval by the Department; (10-1-06)T

b. A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"; and (10-1-06)T

c. A completed employment agreement with the participant that identifies the specific tasks and services that are required of the Support Broker. The employment agreement must include the negotiated hourly rate for the Support Broker, and the type, frequency, and duration of services. The negotiated rate must not exceed the maximum hourly rate for Support Broker services established by the Department. (10-1-06)T

02. Required Support Broker Duties. Support Broker services may include only a few required tasks or may be provided as a comprehensive service package depending on the participant's needs and preferences. At a minimum, the Support Broker must: (10-1-06)T

a. Participate in the person-centered planning process; (10-1-06)T

b. Develop a written support and spending plan with the participant that includes the supports that the participant needs and wants, related risks identified with the participant's wants and preferences, and a comprehensive risk plan for each potential risk that includes at least three (3) backup plans should a support fail. This plan must be authorized by the Department; (10-1-06)T

c. Assist the participant to monitor and review his budget; (10-1-06)T

d. Submit documentation regarding the participant's satisfaction with identified supports as requested by the Department; (10-1-06)T

e. Participate with Department quality assurance measures, as requested; (10-1-06)T

f. Assist the participant to complete the annual re-determination process as needed, including updating the support and spending plan and submitting it to the Department for authorization; ~~*and*~~ ~~*(10-1-06)T*~~(10-1-06)T

g. Assist the participant, as needed, to meet ~~*his*~~ *the* participant responsibilities outlined in Section 120 of these rules and *assist the participant, as needed,* to protect his own health and safety~~.~~*; and* ~~*(10-1-06)T*~~(10-1-06)T

h. *Complete the Department-approved criminal history check waiver form when a participant chooses to waive the criminal history check requirement for a community support worker. Completion of this form requires that the support broker provide education and counseling to the participant and his circle of support regarding the risks of waiving a criminal history check and assist with detailing the rationale for waiving the criminal history check and*

how health and safety will be protected. (10-1-06)T

03. ~~Optional~~ Additional Support Broker Duties. ~~Depending on the requests and needs of each participant, the support broker may:~~ In addition to the required support broker duties, each support broker must be able to provide the following services when requested by the participant: ~~(10-1-06)T~~(10-1-06)T

a. Assist the participant to develop and maintain a circle of support; (10-1-06)T

b. Help the participant learn and implement the skills needed to recruit, hire, and monitor community supports; (10-1-06)T

c. Assist the participant to negotiate rates for paid Community Support Workers; (10-1-06)T

d. Maintain documentation of supports provided by each Community Support Worker and participant's satisfaction with these supports; (10-1-06)T

e. Assist the participant to monitor community supports; (10-1-06)T

f. Assist the participant to resolve employment-related problems; and (10-1-06)T

g. Assist the participant to identify and develop community resources to meet specific needs. (10-1-06)T

04. Termination of Support Broker Services. If a support broker decides to end services with a participant, he must give the participant at least ~~fifteen~~ thirty (~~15~~30) days' written notice prior to terminating services. The support broker must assist the participant to identify a new support broker and provide the participant and new support broker with a written service transition plan by the date of termination. The transition plan must include an updated support and spending plan that reflects current supports being received, details about the existing community support workers, and unmet needs. ~~(10-1-06)T~~(10-1-06)T

137. -- 139. (RESERVED).

140. COMMUNITY SUPPORT WORKER LIMITATIONS.
A paid community support worker must not be the spouse of the participant and must not have direct control over the participant's choices, must avoid any conflict of interest, and ~~cannot~~ must not receive undue financial benefit ~~financially~~ from the participant's choices. A legal guardian can be a paid community support worker but must not be paid from the individualized budget for the following: ~~(10-1-06)T~~(10-1-06)T

01. Participant Responsibilities. The legal guardian must not be paid to perform or to assist the participant in meeting the participant responsibilities outlined in Section 120 of these rules. (10-1-06)T

02. Legal Guardian Obligations. The legal guardian must not be paid to fulfill any obligations he is legally responsible to fulfill as outlined in the guardianship or conservator order

from the court. *(10-1-06)T*

141. -- 149. (RESERVED).

150. PAID COMMUNITY SUPPORT WORKER DUTIES AND RESPONSIBILITIES.

01. Initial Documentation. Prior to providing goods or services to the participant, the Community Support Worker must complete the packet of information provided by the Fiscal Employer Agent and submit it to the Fiscal Employer Agent. When the Community Support Worker will be providing services, this packet must include documentation of: (10-1-06)T

a. A completed criminal history check, including clearance in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," or documentation that this requirement has been waived by the participant. This documentation ~~will~~ *must be provided on a Department-approved form and must* include the rationale for waiving the criminal history check and describe how health and safety will be assured in lieu of a completed criminal history check. Individuals listed on a state or federal provider exclusion list must not provide paid supports; ~~(10-1-06)T~~(10-1-06)T

b. A completed employment agreement with the participant that specifically defines the type of support being purchased, the negotiated rate, and the frequency and duration of the support to be provided. If the Community Support Worker is provided through an agency, the employment agreement must include the specific individual who will provide the support and the agency's responsibility for tax-related obligations; (10-1-06)T

c. Current state licensure or certification if identified support requires certification or licensure; and (10-1-06)T

d. A statement of qualifications to provide supports identified in the employment agreement. (10-1-06)T

02. Employment Agreement. The Community Support Worker must deliver supports as defined in the employment agreement. (10-1-06)T

03. Documentation of Supports. The Community Support Worker must track and document the time required to perform the identified supports and accurately report the time on the time sheets provided by the participant's Fiscal Employer Agent or complete an invoice that reflects the type of support provided, the date the support was provided, and the negotiated rate for the support provided, for submission to the participant's Fiscal Employer Agent. (10-1-06)T

04. Timesheets and Invoices. The Community Support Worker must obtain the signature of the participant or his legal representative on each completed timesheet or invoice prior to submitting the document to the Fiscal Employer Agent for payment. Time sheets or invoices that are not signed by the Community Support Worker and the participant or his legal representative will not be paid. (10-1-06)T

151. -- 159. (RESERVED).

160. SUPPORT AND SPENDING PLAN DEVELOPMENT.

01. Support and Spending Plan Requirements. The participant, with the help of his Support Broker, must develop a comprehensive support and spending plan based on the information gathered during the person-centered planning. The support and spending plan is not valid until authorized by the Department and must include the following: (10-1-06)T

a. The participant's preferences and interests by identifying all the supports and services, both paid and non-paid, the participant wants and needs to live successfully in his community. (10-1-06)T

b. Paid or non-paid self-directed community supports that focus on the participant's wants, needs, and goals in the following areas: (10-1-06)T

i. Personal health and safety including quality of life preferences; (10-1-06)T

ii. Securing and maintaining employment; (10-1-06)T

iii. Establishing and maintaining relationships with family, friends and others to build the participant's circle of supports; (10-1-06)T

iv. Learning and practicing ways to recognize and minimize interfering behaviors; and (10-1-06)T

v. Learning new skills or improving existing ones to accomplish set goals. (10-1-06)T

c. Support needs such as: (10-1-06)T

i. Medical care and medicine; (10-1-06)T

ii. Skilled care including therapies or nursing needs; (10-1-06)T

iii. Community involvement; (10-1-06)T

iv. Preferred living arrangements including possible roommate(s); and (10-1-06)T

v. Response to emergencies including access to emergency assistance and care. This plan should reflect the wants, preferences, and needs of the whole person, regardless of payment source, if any. (10-1-06)T

d. Risks or safety concerns in relation to the identified support needs on the participant's plan. The plan must specify the supports or services needed to address the risks for each issue listed, with at least three (3) backup plans for each identified risk to implement in case the need arises; (10-1-06)T

e. Sources of payment for the listed supports and services, including the frequency, duration, and main task of the listed supports and services; and (10-1-06)T

f. The budgeted amounts planned in relation to the participant's needed supports. Community Support Worker employment agreements submitted to the Fiscal Employer Agent must identify the negotiated rates agreed upon with each Community Support Worker along with the specific support being purchased, the frequency and duration that the support will be provided, and the payment increment; that is, hourly or daily. The Fiscal Employer Agent will compare and match the employment agreements to the appropriate support categories identified on the initial spending plan prior to processing time sheets or invoices for payment. (10-1-06)T

02. Support and Spending Plan Limitations. Support and spending plan limitations include: (10-1-06)T

a. Traditional Medicaid waiver and traditional rehabilitative or habilitative services must not be purchased under the SDCS option*. Because a participant cannot receive these traditional services and self-directed services at the same time, the participant, the support broker, and the Department must all work together to assure that there is no interruption of required services when moving between traditional services and the SDCS option*; ~~*(10-1-06)T*~~(10-1-06)T

b. Paid community supports must not be provided in a ~~*congregate*~~ *group* setting with recipients of traditional Medicaid waiver, rehabilitative or habilitative services*. This limitation does not preclude a participant who has selected the self-directed option from choosing to live with recipients of traditional Medicaid services*; ~~*(10-1-06)T*~~(10-1-06)T

c. All paid community supports must fit into one (1) or more types of community supports described in Section 110 of these rules. Community supports that are not medically necessary or that do not minimize the participant's need for institutionalization must only be listed as non-paid supports. Additionally, the support and spending plan must not include supports or services that are illegal, that adversely affect the health and safety of the participant, that do harm, or that violate or infringe on the rights of others; (10-1-06)T

d. Support and spending plans that exceed the approved budget amount will not be authorized; and (10-1-06)T

e. Time sheets or invoices that are submitted to the Fiscal Employer Agent for payment that exceed the authorized support and spending plan amount will not be paid by the Fiscal Employer Agent. (10-1-06)T

161. -- 169. (RESERVED).

170. PERSON-CENTERED PLANNING.

01. Participation in the Person-Centered Planning Process. The participant agrees to participate in the person-centered planning process in order to identify and document his support and service needs, wants, and preferences. (10-1-06)T

02. Participant Choice. The participant decides who he wants to participate in the planning sessions in order to ensure the participant's choices are honored and promoted.

(10-1-06)T

03. Facilitation of Person-Centered Planning Meetings. The participant may direct his person-centered planning meetings, or these meetings may be facilitated by the chosen support broker. (10-1-06)T

04. Focus of Person-Centered Planning. The person-centered planning should focus on identifying strengths, capacities, preferences, needs, and desired goals of the participant for all life areas. (10-1-06)T

05. Timeframes of Person-Centered Planning. The person-centered planning should be completed as timely as possible in order to provide the necessary information required to develop the participant's support and spending plan. Time limitations are not currently mandated in order to allow for extensive, comprehensive planning and thoughtful support and spending plan development. (10-1-06)T

171. -- 179. (RESERVED).

180. CIRCLE OF SUPPORTS.
The circle of support is a means of natural supports for the participant and consists of people who encourage and care about the participant. Work or duties the circle of supports perform on behalf of the participant are not paid. (10-1-06)T

01. Focus of the Circle of Support. The participant's circle of support should be built and operate with the primary goal of working in the interest of the participant. The group's role is to give and get support for the participant and to develop a plan of action, along with and on behalf of the participant, to help the participant accomplish his personal goals. (10-1-06)T

02. Members of the Circle of Support. A circle of support may include family members, friends, neighbors, co-workers, and other community members. *When the participant's legal guardian is selected as a community support worker, the circle of support must include at least one (1) non-family member that is not the support broker. For the purposes of this chapter a family member is anyone related by blood or marriage to the participant or to the legal guardian.* ~~*(10-1-06)T*~~(10-1-06)T

03. Selection and Duties of the Circle of Support. Members of the circle of support are selected by the participant and commit to work within the group to: (10-1-06)T

a. Help promote and improve the life of the participant in accordance with the participant's choices and preferences; and (10-1-06)T

b. Meet on a regular basis to assist the participant to accomplish his expressed goals. (10-1-06)T

04. Natural Supports. A natural support may perform any duty of the Support Broker as long as the Support Broker still completes the required responsibilities listed in Subsection 136.02 of these rules. Additionally, any Community Support Worker task may be performed by a qualified natural support person. Supports provided by a natural support person must be identified

on the participant's support plan, but time worked does not need to be recorded or reported to the Fiscal Employer Agent. (10-1-06)T

181. -- 189. (RESERVED).

190. INDIVIDUALIZED BUDGET.
The Department sets an individualized budget for each participant according to an individualized measurement of the participant's functional abilities, behavioral limitations, medical needs, and other individual factors related to the participant's disability. Using these specific participant factors, the budget-setting methodology will correlate a participant's characteristics with the participant's individualized budget amount, so participants with higher needs will be assigned a higher individualized budget amount. The participant must work within the identified budget and acknowledge that he understands the budget figure is a fixed amount. (10-1-06)T

01. Implementation of Budget-Setting Methodology. During the implementation phase of using the new individualized budget-setting methodology, the budget calculation will include reviewing the participant's previous year's budget. When the calculated budget is less than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the calculated budget amount. When the calculated budget is greater than five percent (5%) above or below the previous year's budget, the participant's set budget amount is the previous year's budget amount. The Department will collect information on discrepancies between the calculated budget and the previous year's budget as part of the ongoing assessment and improvement process of the budget-setting methodology. (10-1-06)T

02. Budget Amount Notification and Request for Reconsideration. The Department notifies each participant of his set budget amount. The notification will include how the participant may request reconsideration of the set budget amount. (10-1-06)T

03. Annual Re-Evaluation of Individualized Budgets. Individualized budgets will be re-evaluated annually. At the request of the participant, the Department will also re-evaluate the set budget amount when there are documented changes in the participant's individualized needs and it is demonstrated that these additional needs cannot be supported by the current budget. (10-1-06)T

191. -- 199. (RESERVED).

200. QUALITY ASSURANCE.
The Department will implement quality assurance processes to assure: access to self-directed services, participant direction of plans and services, participant choice and direction of providers, safe and effective environments, and participant satisfaction with services and outcomes. (10-1-06)T

01. Participant Experience Survey (PES). Each participant will have the opportunity to provide feedback to the Department about his satisfaction with self-directed services utilizing the ~~*Participant Experience Survey (*~~PES~~*)*~~. ~~*(10-1-06)T*~~(10-1-06)T

02. Participant Experience Outcomes. Participant experience information will be gathered at least annually in an interview by the Department, and will address the following

participant outcomes: (10-1-06)T

a. Access to care; (10-1-06)T

b. Choice and control; (10-1-06)T

c. Respect and dignity; (10-1-06)T

d. Community integration; and (10-1-06)T

e. Inclusion. (10-1-06)T

03. Fiscal Employer Agent Quality Assurance Activities. The fiscal employer agent must participate in quality assurance activities identified by the Department such as readiness reviews, periodic audits, *maintaining a list of criminal history check waivers,* and timely reporting of accounting and satisfaction data. ~~*(10-1-06)T*~~(10-1-06)T

04. Community Support Workers and Support Brokers Quality Assurance Activities. Community support workers and support brokers must participate and comply with quality assurance activities identified by the Department including performance evaluations, satisfaction surveys, *quarterly review of services provided by a legal guardian, if applicable,* and spot audits of time sheets and billing records. ~~*(10-1-06)T*~~(10-1-06)T

05. Participant Choice of Paid Community Support Worker. Paid Community Support Workers must be selected by the participant, or his chosen representative, and must meet the qualifications identified in Section 150 of this rule. (10-1-06)T

06. Complaint Reporting and Tracking Process. The Department will maintain a complaint reporting and tracking process to ensure participants, workers, and other supports have the opportunity to readily report instances of abuse, neglect, exploitation, or other complaints regarding the HCBS program. (10-1-06)T

07. Quality Oversight Committee. A Quality Oversight Committee consisting of participants, family members, community providers, and Department designees will review information and data collected from the quality assurance processes to formulate recommendations for program improvement. (10-1-06)T

***08. Quarterly Quality Assurance Reviews**. On a quarterly basis, the Department will perform an enhanced review of services for those participants who have waived the criminal history check requirement for a community support worker or who have their legal guardian providing paid services. These reviews will assess ongoing participant health and safety and compliance with the approved support and spending plan. (10-1-06)T*

201. -- 209. (RESERVED).

210. CONTINUATION OF THE SELF-DIRECTED COMMUNITY SUPPORTS (SDCS) OPTION.
The following requirements must be met or the Department may require the participant to

discontinue the SDCS option: (10-1-06)T

01. Required Supports. The participant is willing to work with a Support Broker and a Fiscal Employer Agent. (10-1-06)T

02. Support and Spending Plan. The participant's support and spending plan is being followed. (10-1-06)T

03. Risk and Safety Back-Up Plans. Back-up plans to manage risks and safety are being followed. (10-1-06)T

04. Health and Safety Choices. The participant's choices do not directly endanger his health, welfare and safety or endanger or harm others. (10-1-06)T

211. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.16 - ACCESS TO HEALTH INSURANCE PROGRAM

DOCKET NO. 16-0316-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: **The effective dates for the amendments to the temporary rules are July 1, 2006, and December 1, 2006.** This pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Sections 56-202(b), 56-239, 56-240, and 56-250 through 56-257, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendments to this docket include the addition of definitions for the Access to Health Insurance Program and Children's Access Card and a section for Participant Eligibility for those programs. The payment of a premium to an insurance vendor was amended to clarify that it could be for a full or partial payment. The CMS has granted approval for the Medicaid Health Insurance Flexibility and Accountability (HIFA) waiver amendment and the employer's share requirement is amended to reflect that approval.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 482 through 492.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

There is no fiscal impact to the state General Fund due to this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Robin Pewtress at (208) 364-1892.

DATED this 8th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: **The effective date of the temporary rule is July 1, 2006.**

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-239, 56-240, and 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules in compliance with HB 776 (2006) - "Idaho Medicaid Simplification Act," SB1417 (2006), and HCR50 (2006).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date:	**Wednesday, August 16, 2006**	**Thursday, August 17, 2006**	**Tuesday, August 22, 2006**
Time:	**7:00 p.m.**	**7:00 p.m.**	**7:00 p.m.**
Place:	**Idaho Falls Public Library** **457 Broadway** **Idaho Falls, ID** **Phone: (208) 612-8455**	**Coeur d'Alene Inn** **Hayden Conference Room** **506 W Appleway Ave.** **Coeur d'Alene, ID**	**DHW - Region IV Office** **1720 Westgate Dr.** **Suite D, Room 119** **Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: **The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:**

As part of the implementation of the "Medicaid Modernization and Simplification Act" (HB 776), approved by the 2006 Legislature, the Department has reorganized the access to health insurance program. The rules for the children's access card and premium assistance programs are being moved into this new chapter which will be called "Premium Assistance." This will combine the adult and children's access card premium assistance programs into one chapter of rule.

The changes to this chapter will: allow more children and working adults to be eligible and to qualify for Access Card coverage and health insurance benefits through their employers; and encourage better participation by small business employers in the program to meet insurance carrier requirements for employer contributions as amended by the 2006 Legislature. These rules describe the eligibility criteria, benefits, and reimbursement payment process.

In their new location, these rules will continue to provide Medicaid programs for Children's Access Card and Premium Assistance.

TEMPORARY RULE JUSTIFICATION: **Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is being done to comply with deadlines in amendments to governing law or federal programs.**

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Kate Vandenbroek at (208) 334-5747.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 30th day of June, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
Under Section 56-202(b), Idaho Code, the Legislature has delegated to the Department of Health and Welfare the responsibility to establish and enforce such rules as may be necessary or proper to administer public assistance programs within the state of Idaho. Under Sections 56-241 and 56-242, Idaho Code, the Idaho Legislature has authorized the Department of Health and Welfare to implement a ~~*Small Business Health Insurance Pilot program, which is a*~~ premium assistance program including eligibility criteria, benefits, and reimbursement. ~~*This program is named the Access to Health Insurance Program*~~. The Idaho Department of Health and Welfare is the designated agency to administer programs under Title XIX and Title XXI of the Social Security Act. ~~*(4-11-06)*~~(7-1-06)T

001. TITLE AND SCOPE.

01. Title. The title of this chapter is IDAPA 16.03.16, "~~*Access to Health Insurance Program*~~ Premium Assistance." ~~*(4-11-06)*~~(7-1-06)T

02. Scope. Under Sections 56-241 and 56-242, Idaho Code, these rules describe the general provisions regarding the administration of the ~~*Access to Health Insurance*~~ Premium Assistance Programs. These rules identify eligibility criteria, benefits, and reimbursement. ~~*(4-11-06)*~~(7-1-06)T

03. Policy. It is the policy of the Department~~*, under Section 56-209(b), Idaho Code,*~~ that the Access to Health Insurance Program is available to individuals who are found eligible under these rules. The Children's Access Card participants are found eligible under IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ~~*(4-11-06)*~~(7-1-06)T

002. WRITTEN INTERPRETATIONS.
~~*There are no written interpretations for these rules.*~~ In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ~~*(4-11-06)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE NUMBER -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the state of Idaho. (4-11-06)

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-11-06)

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-11-06)

04. Telephone. The telephone number for the Idaho Department of Health and Welfare is (208) 334-5500. (4-11-06)

05. Internet Website. The Department's internet website is found at "http://www.healthandwelfare.idaho.gov." ~~*The program website is "http://www.AccesstoHealthInsurance.idaho.gov."*~~ ~~*(4-11-06)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

007. ~~*009.*~~ **(RESERVED).**

008. AUDIT, INVESTIGATION AND ENFORCEMENT.
In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse and Misconduct." (7-1-06)T

009. (RESERVED).

010. DEFINITIONS.

~~***01. Adult**. An individual who is at least eighteen (18) years of age and is not a dependent child. (4-11-06)*~~

~~***02. Applicant**. An individual applying for premium assistance under these rules who is employed by, or is the spouse or dependent child of someone who is employed by, an Idaho Small Business. (4-11-06)*~~

~~***03. Application**. Two (2) forms used to determine eligibility. One (1) is a standard form for insurance coverage and one (1) is a supplemental form for Department use only. (4-11-06)*~~

***01. Access to Health Insurance**. A premium assistance program available to Idaho small business employers to help provide private insurance for their employees. (7-1-06)T*

***02. Children's Access Card**. A premium assistance program that pays a premium subsidy toward a private health insurance plan for children who choose to participate in the program. (7-1-06)T*

0~~4~~3. COBRA (Consolidated Omnibus Budget Reconciliation Act of 1985). A federal law that requires most employers to allow eligible employees and their beneficiaries to continue to self-pay for their coverage after it normally terminates for up to eighteen (18), twenty-four (24), twenty-nine (29), or thirty-six (36) months. (4-11-06)

~~***05. Creditable Health Insurance**. Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. (4-11-06)*~~

0~~6~~4. Co-Payment (Co-pay). The amount a participant is required to pay for specified services as required by the participant's private health insurance coverage. ~~*(4-11-06)*~~(7-1-06)T

0~~7~~5. Cost-Sharing. A payment the participant is required to make toward the cost of their health care as required by the participant's private health insurance coverage. ~~*(4-11-06)*~~(7-1-06)T

0~~8~~6. **Department**. The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. ~~(4-11-06)~~(7-1-06)T

~~**09.** **Dependent**. A dependent is an unmarried child under the age of nineteen (19) years or a spouse. (4-11-06)~~

~~**10.** **Employee**. Employee means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (32) hours per week. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. It does not include an employee who works on a part-time, temporary, and seasonal or substitute basis. (4-11-06)~~

~~**11.** **Family**. Individuals related by marriage and any dependent child(ren) of either individual. An unmarried, childless individual is a family of one (1). (4-11-06)~~

~~**12.** **Family Size**. The individuals counted to determine eligibility. (4-11-06)~~

~~**13.** **Federal Poverty Guideline (FPG)**. Federal Poverty Guideline is a measure of income issued annually by the Department of Health and Human Services (HHS). (4-11-06)~~

~~14~~07. **Insurance Carrier**. An insurance company regulated by the Idaho Department of Insurance. (4-11-06)

~~15~~08. **Insurance Representative**. An Insurance Representative is the acting intermediary between the Department of Health and Welfare and the participating small business employer. (4-11-06)

~~16~~09. **Insurance Vendor**. An insurance carrier authorized to receive payments from the Department. (4-11-06)

~~**17.** **Institution**. A facility either under the control of the Idaho Department of Corrections or a facility primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. (4-11-06)~~

~~18~~10. **Participant**. An individual receiving premium assistance under these rules ~~who is employed by, or is the spouse or dependent child of someone who is employed by an Idaho Small Business~~. ~~(4-11-06)~~(7-1-06)T

~~**19.** **Participating Employer**. A small business employer with a signed employer agreement on file with the Department. (4-11-06)~~

~~20~~11. **Premium**. A regular and periodic charge or payment for health coverage. (4-11-06)

~~21~~2. **Premium Assistance**. The partial or total premium payment made to an insurance

company to supplement the cost of enrolling a program participant in a health insurance plan. (4-11-06)

~~**22.** **Renewal**. A review of all the eligibility criteria for a given participant to determine participation continuance. (4-11-06)~~

~~**23.** **Slot**. A placeholder for an adult who is applying for or participating in the Access to Health Insurance program. (4-11-06)~~

~~**24.** **Small Business Employer**. A Small Business Employer is a person, firm, corporation, partnership or association that is actively engaged in business that employs an average of at least two (2) but no more than fifty (50) employees during a calendar year. In determining the number of employees, companies that are affiliated companies, or are eligible to file a combined tax return for purposes of state taxation, will be considered one (1) employer. (4-11-06)~~

~~**25.** **Small Group Health Plan**. A health benefit plan as defined in Title 41, Chapter 47, Idaho Code. (4-11-06)~~

~~**26**~~**13.** **Social Security Act**. 42 U.S.C. 101 et seq., authorizing, in part, federal grants to the states for health care assistance to eligible low-income individuals. (4-11-06)

~~**27**~~**14.** **State**. The state of Idaho. (4-11-06)

~~**28**~~**15.** **Title XIX** ~~**Medicaid**. Medical assistance programs authorized under~~ Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. ~~(4-11-06)~~(7-1-06)T

~~**29**~~**16.** **Title XXI** ~~**State Children's Health Insurance Program (SCHIP)**. Programs authorized under~~ Title XXI of the Social Security Act ~~for child health insurance~~, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. ~~(4-11-06)~~(7-1-06)T

011. ACCESS TO HEALTH INSURANCE - DEFINITIONS.
The following definitions apply to Sections 100 through 410 of these rules. (7-1-06)T

01. Adult. An individual who is at least eighteen (18) years of age and is not a dependent child. (7-1-06)T

02. Applicant. An individual applying for premium assistance under these rules who is employed by, or is the spouse or dependent child of someone who is employed by a participating employer. (7-1-06)T

03. Application. Two (2) forms used to determine eligibility. One (1) is a standard form for insurance coverage and one (1) is a supplemental form for Department use only. (7-1-06)T

04. **Creditable Health Insurance**. Creditable health insurance is coverage that provides benefits for inpatient and outpatient hospital services and physicians' medical and surgical services. Creditable coverage excludes liability, limited scope dental, vision, specified disease or other supplemental-type benefits. (7-1-06)T

05. **Dependent**. A dependent is an unmarried child under the age of nineteen (19) years or a spouse. (7-1-06)T

06. **Employee**. Employee means an employee who works on a full-time basis and has a normal work week of thirty (30) or more hours or, by agreement between the employer and the carrier, an employee who works between twenty (20) and thirty (30) hours per week. The term includes a sole proprietor, a partner of a partnership, or an independent contractor, if the sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer. It does not include an employee who works on a part-time, temporary, and seasonal or substitute basis. (7-1-06)T

07. **Family**. Individuals related by marriage and any dependent child(ren) of either individual. An unmarried, childless individual is a family of one (1). (7-1-06)T

08. **Family Size**. The individuals counted to determine eligibility. (7-1-06)T

09. **Federal Poverty Guideline (FPG)**. Federal Poverty Guideline is a measure of income issued annually by the Department of Health and Human Services (HHS). (7-1-06)T

10. **Institution**. A facility either under the control of the Idaho Department of Corrections or a facility primarily engaged in providing diagnosis, treatment or care of persons with mental diseases. (7-1-06)T

11. **Participating Employer**. A Small Business Employer in Idaho with a signed employer agreement on file with the Department. (7-1-06)T

12. **Renewal**. A review of all the eligibility criteria for a given participant to determine participation continuance. (7-1-06)T

13. **Slot**. A placeholder for an adult who is applying for or participating in the Access to Health Insurance program. (7-1-06)T

14. **Small Business Employer**. A Small Business Employer is a person, firm, corporation, partnership or association that is actively engaged in a business in Idaho. A small business employs an average of at least two (2) but no more than fifty (50) employees during a calendar year. In determining the number of employees, companies that are affiliated companies, or are eligible to file a combined tax return for purposes of state taxation, will be considered one (1) employer. (7-1-06)T

15. **Small Group Health Plan**. A health benefit plan as defined in Title 41, Chapter 47, Idaho Code. (7-1-06)T

01~~1~~2. -- 0~~9~~19. (RESERVED).

020. REVIEW OF RECORDS.
The Department and the U.S. Department of Health and Human Services have the right to review pertinent records of insurance vendors receiving premium assistance payments. (7-1-06)T

021. -- 029. (RESERVED).

~~5~~030. PARTICIPANT RIGHTS.
The participant has rights protected by federal and state laws and Department rules. The Department must inform participants of their rights during the application process and eligibility reviews. (4-11-06)

01. Right to Hearing. Any participant can request a hearing to contest a Department decision under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (4-11-06)

02. Civil Rights. Participants have civil rights under the U.S. and Idaho Constitutions, the Social Security Act, Title IV of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and all other relevant parts of Federal and State laws. (4-11-06)

031. -- 03~~9~~4. (RESERVED).

035. PARTICIPANT ELIGIBILITY.

***01. Children's Access Card**. Eligibility for Children's Access Card participants is determined according to IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." (7-1-06)T*

***02. Access to Health Insurance**. Eligibility for Access to Health Insurance participants is determined according to this chapter of rules. (7-1-06)T*

036. -- 039. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

501. -- 599. (RESERVED).

~~6~~040. PREMIUM ASSISTANCE.
~~*The Access to Health Insurance*~~ Premium Assistance programs pay~~s~~ a premium subsidy toward a private health insurance plan for a participant. ~~*The health insurance plan subsidized must be one regulated by Title 41, Chapter 47, Idaho Code.*~~ The rules governing payment ~~*and benefits*~~ are found in Sections~~*605 through Section 620*~~ 070 of these rules. ~~*(4-11-06)*~~(7-1-06)T

01. Children's Access Card. The health insurance plan subsidized is subject to and

must meet the requirements of Title 41, Chapter 4, Idaho Code. (7-1-06)T

02. Access to Health Insurance. The health insurance plan subsidized is subject to and must meet the requirements of Title 41, Chapter 47, Idaho Code. (7-1-06)T

041. -- 049. (RESERVED).

050. SCOPE OF BENEFITS AND COST-SHARING.
The scope of covered benefits and amounts of cost-sharing must be defined in the private health insurance plan subsidized under this chapter of rule. (7-1-06)T

01. Childhood Immunizations. Childhood immunizations are provided by the State if not covered by the private insurance plan. (7-1-06)T

02. Cost-Sharing. Cost-sharing may include co-insurance, co-payments, deductibles, and excess premium costs above the Department's premium subsidy. (7-1-06)T

03. No Duplicate Payments. The Department will not reimburse for premium assistance for the same month as a reimbursement request for services under either IDAPA 16.03.09, "Medicaid Basic Plan Benefits," or IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," is honored for the same participant. (7-1-06)T

051. -- 059. (RESERVED).

060. GENERAL VENDOR REQUIREMENTS.

***62*01. Vendor Application**. An insurance carrier that wants to participate in the *Access to Health Insurance* Department's premium assistance programs must apply to the Department and be approved for participation. The Department will confirm the vendor is an insurance carrier recognized by the Idaho Department of Insurance as having authority to sell health benefit plans *regulated by Title 41, Chapter 47, Idaho Code* in Idaho. *(4-11-06)*(7-1-06)T

0*1*2. Conforming Benefit Plan. The vendor must certify to the Department that the benefit plan meets the *definition of a health benefit plan regulated by Title 41, Chapter 47, Idaho Code.* following program specific requirements: *(4-11-06)*(7-1-06)T

a. The Children's Access Card Program plan must meet the definition of a health benefit plan that is subject to the requirements of Title 41, Chapter 4, Idaho Code. The benefit plan must include inpatient and outpatient hospital services, and physician medical and surgical services. (7-1-06)T

b. The Access to Health Insurance Program plan must meet the definition of a health benefit plan subject to the requirements of Title 41, Chapter 47, Idaho Code. (7-1-06)T

0*2*3. Vendor Application Denied. The Department will not approve the application of a vendor whose authority to sell insurance plans in the State of Idaho is suspended. (4-11-06)

04. Data Reporting Requirement. The Department requires insurance vendors

participating in the Children's Access Card program to provide data to the Department as necessary to comply with federal reporting requirements. (7-1-06)T

05. Children's Access Card Voucher. The insurance vendor is responsible to request the Children's Access Card voucher from the participant before issuing an insurance policy for which a premium subsidy is expected. (7-1-06)T

061. -- 069. (RESERVED).

070. GENERAL REIMBURSEMENT.

~~*605*~~**01. Insurance Premium Subsidy**. The Department ~~*or its designee*~~ will pay an insurance premium subsidy to an insurance vendor in *full or* partial payment of a premium for a qualifying health benefit plan selected by a participating employer. The Department's payment will not exceed one hundred dollars ($100) each month for each participant. The total payment for eligible children in the same family will not exceed three hundred dollars ($300) each month. The total payment for a family will not exceed five hundred dollars ($500) each month. ~~*(4-11-06)*~~(7-1-06)T

~~*606*~~**02. No Subsidy For COBRA Coverage**. Premium assistance is not available for COBRA coverage. ~~*(4-11-06)*~~(7-1-06)T

~~*65*~~**03. Vendor Payment**. A vendor must prospectively invoice the Department each month for reimbursement of the premium subsidy. The Department must reimburse a vendor within thirty (30) days of receipt of the invoice for participants eligible for premium subsidy. ~~*(4-11-06)*~~(7-1-06)T

071. -- 099. (RESERVED).

ACCESS TO HEALTH INSURANCE EMPLOYER PARTICIPATION CRITERIA
(Sections 100 Through 299)

100. EMPLOYER PARTICIPATION.
An Idaho Small Business Employer who wants to participate in the Access to Health Insurance program must meet each of the following conditions: ~~*(4-11-06)*~~(7-1-06)T

01. Register Intent to Participate. The Small Business Employer or his insurance representative must electronically register the business' intent to participate in the program. The business is placed on a registration list ordered by the date and time stamp of the employer's registration. The business must indicate the number of program slots requested for adult applicants of the business. Placement on the employer registration list is not a guarantee of program participation. (4-11-06)

02. Qualify. The business must qualify for Small Group Health Insurance coverage as defined in Title 41, Chapter 47, Idaho Code. (4-11-06)

03. Idaho Business. The business must be physically located in Idaho and be actively engaged as an Idaho business. (4-11-06)

04. No Other Health Insurance. The employer must not be offering health insurance to employees when the business registers its~~'~~ intent to participate. ~~(4-11-06)~~(7-1-06)T

05. Eligible Employee. The business must have at least one (1) employee eligible for premium assistance. (4-11-06)

06. Employer Agreement. The employer must have a signed program participation agreement on file with the Department. (4-11-06)

07. Employer Share. The employer must pay at least fifty percent (50%) of *the* employee's premium~~*, or if the spouse also participates, fifty percent (50%) of the combined premium for the employee and spouse* *until approval of the Medicaid waiver amendment by the Centers for Medicare and Medicaid Services (CMS)*. *Upon approval of the Medicaid waiver amendment, the employer*~~ *and* must meet the~~*ir*~~ insurance carrier's contribution and participation guidelines. ~~(4-11-06)(7-1-06)T~~(12-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

241. -- 2~~9~~49. (RESERVED).

~~4~~250. PARTICIPATION VACANCY.
When a program slot is vacated, the opportunity to fill the vacancy is offered first to participating employers prior to an employer on the registration list. (4-11-06)

251. -- 299. (RESERVED).

ACCESS TO HEALTH INSURANCE PARTICIPANT ELIGIBILITY CRITERIA
(Sections 300 Through 410)

(BREAK IN CONTINUITY OF SECTIONS)

320. INDIVIDUAL NON-FINANCIAL ELIGIBILITY CRITERIA.
An individual who wants to participate in the Access to Health Insurance program must meet each of the following conditions: (4-11-06)

01. Employer Participates. The individual must be employed by, or be a dependent of an employee of, a participating employer. (4-11-06)

02. Application. The individual must submit an application through the insurance representative for premium assistance to the Department. (4-11-06)

03. Citizen or Permanent Resident Alien. The individual must be a United States citizen or permanent resident alien. (4-11-06)

04. Residency. The individual must voluntarily live in Idaho and have no immediate intention of leaving. (4-11-06)

05. Institution. The individual must not be a resident of an institution at the time of application or renewal. (4-11-06)

06. No Health Insurance. An individual must not have creditable health insurance at the time of application, and must not have disenrolled from creditable health insurance in the six (6) months prior to his application with the intent to qualify for the Access to Health Insurance Program. (4-11-06)

07. ~~*Title XIX Medicaid*~~ Not Title XIX Eligible. The individual must not be eligible for a Title XIX Medicaid Program. ~~*(4-11-06)*~~(7-1-06)T

08. No Other Assistance. The individual must not receive health care assistance through any other program funded by Title XIX or Title XXI for the same month an Access to Health Insurance premium subsidy payment is made on the participant's behalf. (4-11-06)

09. Proof of Insurance. The individual must provide proof of creditable health insurance coverage for any and all dependent children under the age of nineteen (19) if premium assistance is not requested for the children. (4-11-06)

10. Medical Support. An individual who is the non-custodial parent of a dependent child may satisfy a medical support order for that child by providing the child's health insurance through the Access to Health Insurance Program unless the child is found eligible for health care assistance in another home. The child will be disenrolled from the Access to Health Insurance Program and enrolled in the ~~*direct coverage*~~ health care assistance program for which they are eligible. The change of coverage is effective the first of the following month. ~~*(4-11-06)*~~(7-1-06)T

11. Delinquent ~~*CHIP-B*~~ Premiums. A child's premium payments for ~~*CHIP-B*~~ participation in an Idaho Medicaid program must not be more than sixty (60) days in arrears. ~~*(4-11-06)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

355. FAMILY FINANCIAL ELIGIBILITY CRITERIA.

01. Income Limit. The gross family income must not exceed one hundred and eighty-five percent (185%) of the Federal Poverty Guideline (FPG) for the family size. (4-11-06)

02. Adult's Income Counted. The earned and unearned income of each adult counted

in the family size is counted when determining family income. The income of a dependent child is not counted. (4-11-06)

03. Determining Income Eligibility for the Month of Application. Countable income for the application month is calculated using the requirements of IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Sections 34~~6~~5 through 354, 356, 370, and 372 through 385. ~~*(4-11-06)*~~(7-1-06)T

04. Excluded Income. Income that belongs to a child but is paid in the name of the parent or caretaker is excluded from the countable income determination. (4-11-06)

05. No Income Deductions. No deductions are applied to family countable income. (4-11-06)

06. Income Exclusions. Income excluded from the family countable income is defined in IDAPA 16.03.01, "Rules Governing Eligibility for Health Care Assistance for Families and Children," Section 385. (4-11-06)

(BREAK IN CONTINUITY OF SECTIONS)

410. ANNUAL RENEWAL.
Each participant's eligibility must be renewed at least annually. The renewal is a review of all eligibility factors. (4-11-06)

01. Renewal Application Required. Each participant must submit an annual renewal application to continue participation in the program. (4-11-06)

02. Eligibility Criteria Must Be Met. All eligibility criteria specified in these rules except that in Section 320.06 must be met at each renewal to continue participation in the program. (4-11-06)

03. Interim Renewal. The renewal may be conducted prior to the annual renewal date to coincide with a change in insurance coverage. (4-11-06)

04. Closure of Benefits. Failure to complete the renewal process or failure to meet eligibility criteria at renewal will result in closure of program benefits. Each participant must be notified at least ten (10) calendar days prior to the effective date of the action. ~~*(4-11-06)*~~(7-1-06)T

411. -- ~~44~~99. (RESERVED)

Section 450 has been moved to Section 250

~~***451. -- 499. (RESERVED).***~~

Section 500 has been moved to Section 030

~~501. -- 599. (RESERVED).~~

Section 600 has been moved to Section 040

~~601. -- 604. (RESERVED).~~

Section 605 has been moved to Subsection 070.01

Section 606 has been moved to Subsection 070.02

~~607. -- 614. (RESERVED).~~

~~615. BENEFITS AND COST-SHARING.~~
~~*Participating private health insurers must define the covered benefits and amounts of cost-sharing provided by the plan, subject to the requirements set forth in Title 41, Chapter 47, Idaho Code. Cost-sharing may include co-insurance, co-payments, deductibles, and excess premium costs above the Department's premium subsidy.* (4-11-06)~~

~~616. -- 619. (RESERVED).~~

Section 620 has been moved to Section 060

~~621. -- 649. (RESERVED).~~

Section 650 has been moved to Subsection 070.03

~~651. -- 999. (RESERVED).~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.17 - SERVICE COORDINATION

DOCKET NO. 16-0317-0601 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202, 56-203, and 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Idaho Medicaid Simplification Act."

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, page 493.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Pam Mason at (208) 364-1863.

DATED this 6th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), and 56-250 through 56-257, Idaho Code. These rule changes are being made to bring this chapter of rules into compliance with HB 776 (2006) - "Medicaid Modernization and Simplification Act".

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

DEPARTMENT OF HEALTH & WELFARE ***Docket No. 16-0317-0601***
Service Coordination ***PENDING RULE***

Date:	**Wednesday, August 16, 2006**	**Thursday, August 17, 2006**	**Tuesday, August 22, 2006**
Time:	**7:00 p.m.**	**7:00 p.m.**	**7:00 p.m.**
Place:	**Idaho Falls Public Library**	**Coeur d'Alene Inn**	**DHW - Region IV Office**
	457 Broadway	**Hayden Conference Room**	**1720 Westgate Dr.**
	Idaho Falls, ID	**506 W Appleway Ave.**	**Suite D, Room 119**
	Phone: (208) 612-8455	**Coeur d'Alene, ID**	**Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: This entire chapter of rules is being repealed. The Department is developing a new chapter of rules regarding Medicare/Medicaid coordinated plan benefits that will be published under IDAPA 16.03.17 in the future under a new docket.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Pam Mason at (208) 364-1863.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 23, 2006.

DATED this 30th day of June, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 332-7347 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.03.17 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.03.22 - RESIDENTIAL CARE OR ASSISTED LIVING FACILITIES

DOCKET NO. 16-0322-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-3305, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

In this pending rule, the Department has amended the proposed rule date for final compliance in Section 152, Admissions Policies, containing the grandfather clause related to fire-suppression sprinklers for certain facilities that accept residents who are incapable of self-evacuation. The date for final compliance has been changed from July 1, 2007, to July 1, 2010.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and the section changed is being republished following this notice. The Department amended the pending rule with the same revisions that have been made in the amendment to the temporary rule. The amendment to the temporary rule was published in the September 6, 2006, Idaho Administrative Bulletin, Vol. 06-9, pages 85 through 87. Only the Section that has changes different from the original temporary and proposed text is printed in this bulletin. The complete original text of the temporary and proposed rule was published in the August, 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 504 through 512.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

This rulemaking has no fiscal impact on Medicaid costs or the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Randy May at (208) 334-5747.

DATED this 3rd day of November, 2006.

DEPARTMENT OF HEALTH & WELFARE **Docket No. 16-0322-0601**
Residential Care or Assisted Living Facilities **PENDING RULE**

THIS NOTICE WAS PUBLISHED WITH THE AMENDMENT TO TEMPORARY RULE

EFFECTIVE DATE: The effective date of the amended temporary rule is July 20, 2006.

AUTHORITY: In compliance with Section 67-5226, Idaho Code, notice is hereby given that this agency has amended a previously adopted temporary rule. The action is authorized pursuant to Section 39-3305, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for amending the temporary rule:

This rule change amends the date for final compliance in Section 152, Admission Policies, containing the grandfather clause related to fire-suppression sprinklers for certain facilities that accept residents who are incapable of self-evacuation. The date for final compliance has been changed from July 1, 2007, to July 1, 2010.

The text of the temporary rule is being amended in accordance with Section 67-5226, Idaho Code, and the section being amended is being republished following this notice. Only Section 152 in which the changes have been made is printed in this bulletin. The original text of the temporary and proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 504 through 513.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

This amendment is necessary to protect the public health, safety, or welfare.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

This rulemaking has no fiscal impact on Medicaid costs or the state general fund.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this amendment to temporary rule, contact Randy May at (208) 334-5747.

DATED this 20th day of July, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

DEPARTMENT OF HEALTH & WELFARE ***Docket No. 16-0322-0601***
Residential Care or Assisted Living Facilities ***PENDING RULE***

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-3305, Idaho Code. Changes in Section 940 are being made based on House Bill 565 (2006).

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In January 2006, during the legislative review process for the rewritten rule governing Residential Care or Assisted Living Facilities (RCALFs) in Idaho (Docket No. 16-0322-0502), the Department committed to promulgating a temporary rule, at the first window of opportunity at the close of the session. These rules add a grandfather clause to the section of rule requiring fire-suppression sprinklers for certain facilities that accept residents who are incapable of self-evacuation. This will allow those facilities covered under the grandfather clause in the previous rule additional time to come into compliance with the sprinkler requirements in the rewritten rule. The intent of this rule change is that effective July 1, 2007, all facilities that accept residents who are incapable of self-evacuation must have a fire-suppression sprinkler system installed.

The section of rule regarding "Written Interpretations" is being revised to eliminate ambiguity in the wording which may be misconstrued to mean that written interpretations may be used to implement substantive requirements in the rule. The Department is also removing references to "administrators" from Enforcement Section 940 since they are subject to the requirements of the Bureau of Occupational Licenses under HB 565 (2006).

Several other minor revisions will be done as well to clarify requirements in the rule so as to better assure compliance.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason: it is necessary to protect the public health, safety, or welfare.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

This rulemaking has no fiscal impact on Medicaid costs or the state general fund.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was

conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Randy May at (208) 334-5747.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 23, 2006.

DATED this 14th day of June, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
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kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

002. WRITTEN INTERPRETATIONS.
~~*These rules may be implemented through informational letters generated and maintained by the Department.*~~ In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules.
~~*(3-30-06)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

012. DEFINITIONS AND ABBREVIATIONS O THROUGH Z.

01. Owner. Any person or entity, having legal ownership of the facility as an operating business, regardless of who owns the real property. (3-30-06)

02. Personal Assistance. The provision by the staff of the facility of one (1) or more of the following services as outlined in the Negotiated Service Agreement: (3-30-06)

a. Assisting the resident with activities of daily living and instrumental activities of daily living. (3-30-06)

b. Arranging for supportive services. (3-30-06)

c. Being aware of the resident's general whereabouts and supervision. (3-30-06)

d. Monitoring the activities of the resident while on the premises of the facility to assure the resident's health, safety, and well-being. (3-30-06)

e. Assisting residents with self-administration of medication. (3-30-06)

03. Personnel. Paid individuals assigned the responsibility of providing care and supervision and services to the facility and its residents. (3-30-06)

04. Physical Restraint. Any device or physical force that restricts the free movement of, normal functioning of, or normal access to a portion or portions of an individual's body except for treatment of a medical condition. (3-30-06)

05. Portable Heating Device. Any device designed to provide heat on a temporary basis; is not designed as part of a building's heating system; is not permanently affixed to the building; and, if electrical, is not hardwired to the building's electrical service. This does not include the therapeutic devices of heating pads, heated mattress pads and electric blankets which require a physician or authorized provider’s order. (3-30-06)

06. PRN. Indicates that a medication or treatment prescribed by a medical professional to an individual may be given as needed. (3-30-06)

07. Pressure Ulcer. Any lesion caused by unrelieved pressure that results in damage to the underlying tissue(s). Although friction and shear are not primary causes of pressure ulcers, friction and shear are important contributing factors to the development of pressure ulcers. (3-30-06)

08. Provisional License. A license which may be issued to a facility not in compliance with the rules pending the satisfactory correction of all deficiencies. (3-30-06)

09. Psychosocial History. A combined summary of psychological and social histories of an individual designed to inform a care giver of a person's abilities and limitations which will assist in identifying appropriate resources. (3-30-06)

10. Publicly Funded Programs. Any program funded in whole or in part by an appropriation of the U.S. Congress, the Idaho Legislature, or other governmental body. (3-30-06)

11. Punishment. Any action in which an adverse consequence is presented to a resident that is designed to produce a decrease in the rate, intensity, duration or probability of the occurrence of a behavior; or the administration of any noxious or unpleasant stimulus or deprivation of a resident's rights or freedom for the purpose of reducing the rate, intensity, duration, or probability of a particular behavior. (3-30-06)

12. Relative. A person related by birth, adoption, or marriage to the first degree and grandparent and grandchild. (3-30-06)

13. Repeat Deficiency. A deficiency found on a resurvey, complaint investigation, or follow-up survey that was also found on the previous survey or visit. (3-30-06)

14. Resident. An adult, other than the owner, administrator, their immediate families, or employees, who lives in a residential care or assisted living facility. (3-30-06)

15. Residential Care or Assisted Living Facility. A facility or residence, however named, operated on either a profit or nonprofit basis for the purpose of providing necessary supervision, personal assistance, meals, and lodging to three (3) or more adults not related to the owner. In this chapter, Residential Care or Assisted Living Facilities are referred to as "facility." Distinct segments of a facility may be licensed separately, provided each segment functions independently and meets all applicable rules. (3-30-06)

16. Room and Board. Lodging, meals, and utilities. (3-30-06)

17. Scope. The frequency or extent of the occurrence of a deficiency in a facility. (3-30-06)

18. Self-Evacuating Resident. A resident who is able to leave the building without one-on-one (1 on 1) or hands-on assistance and can remain at a designated location. (3-30-06)

19. Self Preservation. The ability of a person to independently avoid situations and circumstances in which he might be easily taken advantage of, and to protect themselves and property. (3-30-06)

20. Short Term. A treatment window designed to allow a resident to receive treatment for a short term acute episode, usually fourteen (14) days or less, as determined by a licensed professional nurse. (3-30-06)

21. Story. That portion of a building included between the upper surface of a floor and the upper surface of the floor or roof next above. It is measured as the vertical distance from top to top of two (2) successive tiers of beams or finished floor surfaces and, for the topmost story, from the top of the floor finish to the top of the ceiling joists or, where there is not a ceiling, to the top of the roof rafters. (3-30-06)

22. Story Above Grade Plane. Any story having its finished floor surface entirely above grade plane, except that a basement will be considered as a story above grade plane where the finished surface of the floor above the basement is: (1) more than six (6) feet (1829 mm) above grade plane, (2) more than six (6) feet (1829 mm) above the finished ground level for more than fifty percent (50%) of the total building perimeter; or (3) more than twelve (12) feet (3658 mm) above the finished ground level at any point. (3-30-06)

23. Substantial Compliance. A facility is in substantial compliance with these rules when no core issues have been cited as a deficiency during any survey. (3-30-06)

24. Substantial Evening Meal. An offering of three (3) or more menu items at one-time, one (1) of which includes a high-quality protein such as meat, fish, eggs, or cheeses. The meal should represent no less than twenty percent (20%) of the day's total nutritional

requirements. (3-30-06)

25. Supervision. A critical watching and directing activity which provides protection, guidance, knowledge of the resident's general whereabouts, and assistance with activities of daily living. The administrator is responsible for providing appropriate supervision based on each resident's Negotiated Service Agreement or other legal requirements. (3-30-06)

26. Supportive Services. Services provided to the resident in the community. (3-30-06)

27. Survey. A review conducted by a surveyor to determine compliance with statutes and rules. There are two (2) components to a survey, health care and fire life safety and sanitation. (3-30-06)

28. Surveyor. A person authorized by the Department to conduct surveys or complaint investigations to determine compliance with statutes and rules. (3-30-06)

29. Syringe -- Oral Feeding. Use of a syringe to deliver liquid or pureed nourishment directly into the mouth. (3-30-06)

30. Therapeutic Diet. A diet ordered by a physician or authorized provider as part of treatment for a clinical condition or disease, or to eliminate or decrease specific nutrients in the diet, (e.g. sodium) or to increase specific nutrients in the diet (e.g. potassium) or to provide food the resident is able to eat (e.g. mechanically altered diet). (3-30-06)

31. Traumatic Brain Injury (TBI). An acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both. The term applies to open or closed head injuries resulting in impairments in one (1) or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psycho-social behavior; physical functions; information processing; and speech. (3-30-06)

32. Trust Account. An account maintained by the facility separate from its own accounts, to deposit, hold, or disburse monies belonging to a resident. The facility is the trustee of such accounts and the residents are the beneficiaries. (3-30-06)

33. Uniform Assessment Instrument (UAI). A set of standardized criteria to assess functional and cognitive abilities of the resident. (3-30-06)

34. Unlicensed Assistive Personnel (UAP). Unlicensed assistive personnel (UAP) employed to perform nursing care services under the direction and supervision of licensed nurses. UAP also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (3-30-06)

35. Variance. Permission by the Department to do something contrary to rule. (3-30-06)

36. **Waiver Services**. Home and Community Based (HCBS) Services. (3-30-06)

37. **Waivered Level Three Small Facility**. An existing facility, licensed prior to July 1, 1992, that: (7-1-06)T

a. Serves residents who require extensive assistance with mobility; (7-1-06)T

b. Houses nine (9) or fewer residents on the first story only; and (7-1-06)T

c. Complies with the requirements of Chapter 21, Residential Board and Care Section for Prompt Evacuation Capability, of the National Fire Protection Association (NFPA), Life Safety Code, 1988 Edition. (7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

152. ADMISSION POLICIES.

01. **Admissions**. Each facility must develop written admission policies and procedures. The written admission policy must include; (3-30-06)

a. The purpose, quantity and characteristics of available services; (3-30-06)

b. Any restrictions or conditions imposed because of religious or philosophical reasons. (3-30-06)

c. Limitations concerning delivery of routine personal care by persons of the opposite gender. (3-30-06)

d. Notification of any residents who are on the sexual offender registry and who live in the facility. The registry may be accessed at "http://www.isp.state.id.us/identification/sex_offender/public_access.html". (3-30-06)

e. Appropriateness of placement to meet the needs of the resident, when there are non resident adults or children residing in the facility. (3-30-06)

02. **Fee Description**. A written description of how fees will be handled by the facility. (3-30-06)

03. **Resident Funds Policies**. When a resident's funds are deposited with the facility or administrator, the facility must manage the residents' funds as provided in Sections 39-3316 (1), (5) & (6), Idaho Code, and Section 505 and Subsections 550.05 and 550.06 of these rules. Each facility must develop written policies and procedures outlining how residents' funds will be handled. (3-30-06)

a. A statement if the facility does not manage resident funds. (3-30-06)

b. If the facility manages resident funds, how funds are handled and safeguarded. (3-30-06)

04. Resident Admission, Discharge, and Transfer. The facility must have policies addressing admission, discharge, and transfer of residents to, from, or within the facility. (3-30-06)

05. Policies of Acceptable Admissions. Written descriptions of the conditions for admitting residents to the facility must include: (3-30-06)

a. A resident will be admitted or retained only when the facility has the capability, capacity, and services to provide appropriate care, or the resident does not require a type of service for which the facility is not licensed to provide or which the facility does not provide or arrange for, or if the facility does not have the personnel, appropriate in numbers and with appropriate knowledge and skills to provide such services; (3-30-06)

b. No resident will be admitted or retained who requires ongoing skilled nursing or care not within the legally licensed authority of the facility. Such residents include: (3-30-06)

i. A resident who has a gastrostomy tube, arterial-venous (AV) shunts, or supra-pubic catheter inserted within the previous twenty-one (21) days; (3-30-06)

ii. A resident who is receiving continuous total parenteral nutrition (TPN) or intravenous (IV) therapy; (3-30-06)

iii. A resident who requires physical restraints, including bed rails, an exception is a chair with locking wheels or chair in which the resident can not get out of; (3-30-06)

iv. A resident who is comatose, except for a resident who has been assessed by a physician or authorized provider who has determined that death is likely to occur within fourteen (14) to thirty (30) days; (3-30-06)

v. A resident who is on a mechanically supported breathing system, except for residents who use CPAP, (continuous positive airway pressure); (3-30-06)

vi. A resident who has a tracheotomy who is unable to care for the tracheotomy independently; (3-30-06)

vii. A resident who is fed by a syringe; (3-30-06)

viii. A resident with open, draining wounds for which the drainage cannot be contained; (3-30-06)

ix. A resident with a Stage III or IV pressure ulcer; (3-30-06)

x. A resident with any type of pressure ulcer or open wound that is not improving bi-weekly; (3-30-06)

xi. A resident who has MRSA (methiccillin-resistant staphylococcus aureus) in an active stage (infective stage). (3-30-06)

c. For any resident who has needs requiring a nurse, the facility must assure a licensed nurse is available to meet the needs of the resident. (3-30-06)

d. A resident will not be admitted or retained who has physical, emotional, or social needs that are not compatible with the other residents in the facility; (3-30-06)

e. A resident that is violent or a danger to himself or others; (3-30-06)

f. Any resident requiring assistance in ambulation must reside on the first story unless the facility complies with Sections 401 through 404 of these rules; (3-30-06)

g. Residents who are not capable of self evacuation must not be admitted or retained by a facility which does not comply with the NFPA Standard #101, "Life Safety Code, 2000 Edition, Chapter 33, Existing Residential Board and Care Impracticable Evacuation Capability;" and (3-30-06)

h. Until July 1, 200~~7~~*10*, Waivered Level 3 Small Facilities will be exempt from complying with the requirements under Subsection 152.05.g. of this rule, including the requirement to have at least a residential fire sprinkler system. On July 1, 200~~7~~*10*, all Waivered Level 3 Small Facilities that admit or retain residents who are incapable of self-evacuation will be required to comply with the requirements under Subsection 152.05.g. of this rule. This includes being equipped with at least an operable residential fire sprinkler system. Any facility sold prior to July 1, 200~~7~~*10*, must meet the requirements under Subsection 403.03 of these rules before a new license will be issued. ~~(7-1-06)T~~*(7-20-06)T*

(BREAK IN CONTINUITY OF SECTIONS)

221. REQUIREMENTS FOR TERMINATION OF ADMISSION AGREEMENT.

01. Conditions for Termination of the Admission Agreement. The admission agreement cannot be terminated, except under the following conditions: (3-30-06)

a. Giving the other party thirty (30) calendar days written notice for any reason; (3-30-06)

b. The resident's death; (3-30-06)

c. Emergency conditions that requires the resident to be transferred to protect the resident or other residents in the facility from harm; (3-30-06)

d. The resident's mental or medical condition deteriorates to a level requiring care as

described in Section 33-3307, Idaho Code, and Subsection 152.05 of these rules; (3-30-06)

e. Nonpayment of the resident's fees; (3-30-06)

f. When the facility can not meet resident needs due to changes in services, in house or contracted, or inability to provide the services; ~~*and*~~ or ~~*(3-30-06)*~~(7-1-06)T

g. Other written conditions as may be mutually established between the resident, the resident's legal guardian or conservator and the administrator of the facility at the time of admission. (3-30-06)

02. Facility Responsibility During Resident Discharge. The facility is responsible to assist the resident with transfer by providing a list of skilled nursing facilities, other residential care or assisted living facilities, and certified family homes that may meet the needs of the resident. (3-30-06)

03. Resident's Appeal of Involuntary Discharge. A resident may appeal all discharges with the exception of an involuntary discharge in the case of non-payment, emergency conditions that require the resident to be transferred to protect the resident or other residents in the facility from harm. (3-30-06)

a. Before a facility discharges a resident, the facility must notify the resident, and if known, a family member, or his legal representative of the discharge and the reasons for the discharge. (3-30-06)

b. This notice must be in writing and in a language and manner the resident or his representative can understand. (3-30-06)

04. Written Notice of Discharge. The written notice of discharge must include the following: (3-30-06)

a. The reason for the discharge; (3-30-06)

b. Effective date of the discharge; (3-30-06)

c. A statement that the resident has the right to appeal the discharge to the Department within thirty (30) calendar days of receipt of written notice of discharge; (3-30-06)

d. The name and address of where the appeal must be submitted; (3-30-06)

e. The name, address, and telephone number of the local ombudsman, for residents sixty (60) years of age or older; and (3-30-06)

f. The name, address and telephone number of CO-AD, for residents with developmental disabilities or mental illness. (3-30-06)

g. If the resident fails to pay fees to the facility, as agreed to in the admission agreement, during the discharge appeal process, the resident's appeal of the involuntary discharge

becomes null and void and the discharge notice applies. (3-30-06)

h. When the notice does not contain all the above required information, the notice is void and must be reissued. (3-30-06)

05. Receipt of Appeal. Request for an appeal must be received by the Department within thirty (30) calendar days of the resident's or resident's representative's receipt of written notice of discharge to stop the discharge before it occurs. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

940. ENFORCEMENT REMEDY OF REVOCATION OF FACILITY LICENSE.

01. Revocation of Facility's License. The Department may revoke a license when the facility endangers the health or safety of residents, or when the facility is not in substantial compliance with the provisions of Title 39, Chapter 33, Idaho Code, or this chapter of rules. (3-30-06)

02. Reasons for Revocation or Denial of a Facility License. The Department may revoke or deny any facility license for any of the following reasons: (3-30-06)

a. The licensee has willfully misrepresented or omitted information on the application or other documents pertinent to obtaining a license; (3-30-06)

b. When persuaded by a preponderance of the evidence that such conditions exist which endanger the health or safety of any resident; (3-30-06)

c. Any act adversely affecting the welfare of residents is being permitted, aided, performed, or abetted by the person or persons in charge of the facility. Such acts may include, but are not limited to, neglect, physical abuse, mental abuse, emotional abuse, violation of civil rights, criminal activity, or exploitation; (3-30-06)

d. The licensee has demonstrated or exhibited a lack of sound judgment essential to the operation and management of a facility; (3-30-06)

e. The licensee has violated any of the conditions of a provisional license; (3-30-06)

f. The facility lacks adequate personnel, as required by these rules or as directed by the Department, to properly care for the number and type of residents residing at the facility; (3-30-06)

g. Licensee refuses to allow the Department or the Protection and Advocacy agencies full access to the facility environment, facility records, and the residents as described in Subsections 130.04 through 130.06, and 550.18 through 550.19 of these rules; (3-30-06)

h. The licensee ~~or administrator~~ has been guilty of fraud, gross negligence, abuse, assault, battery, or exploitation with respect to the operation of a health facility or residential care or assisted living facility or certified family home; ~~(3-30-06)~~(7-1-06)T

i. The licensee ~~or administrator~~ is actively affected in his performance by alcohol or the use of drugs classified as controlled substances; ~~(3-30-06)~~(7-1-06)T

j. The licensee ~~or administrator~~ has been convicted of a criminal offense other than a minor traffic violation within the past five (5) years; ~~(3-30-06)~~(7-1-06)T

k. The licensee ~~or administrator~~ is of poor moral and responsible character or has been convicted of a felony or defrauding the government; ~~(3-30-06)~~(7-1-06)T

l. The licensee ~~or administrator~~ has been denied, or the licensee's wrong doing, has caused the revocation of any license or certificate of any health facility, residential care or assisted living facility, or certified family home; ~~(3-30-06)~~(7-1-06)T

m. The licensee ~~or administrator~~ has been convicted of operating any health facility or residential care or assisted living facility without a license or certified family home without a certificate; ~~(3-30-06)~~(7-1-06)T

n. The licensee is directly under the control or influence of any person who has been the subject of proceedings as described in Subsection 940.02.m. of these rules; (4-11-06)

o. The licensee is directly under the control or influence of any person who is of poor moral and responsible character or has been convicted of a felony or defrauding the government; (4-11-06)

p. The licensee is directly under the control or influence of any person who has been convicted of a criminal offense other than a minor traffic violation in the past five (5) years; (4-11-06)

q. The licensee fails to pay civil monetary penalties imposed by the Department as described in Section 925 of these rules; (4-11-06)

r. The licensee fails to take sufficient corrective action as described in Sections 900, 905 and 910 of these rules; or (4-11-06)

s. The number of residents currently in the facility exceeds the number of residents the facility is licensed to serve. (4-11-06)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.11 - DEVELOPMENTAL DISABILITIES AGENCIES

DOCKET NO. 16-0411-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-4601 et seq., Idaho Code; also Sections 56-202(b) and 56-203(g), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006, Idaho Administrative Bulletin, Vol. 06-8, pages 513 through 516.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cameron Gilliland at (208) 334-5536.

DATED this 3rd day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 39-4601 et seq., Idaho Code; also Sections 56-202(b) and 56-203(g), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an

agency, not later than Wednesday, August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Providers of developmental disabilities agency (DDA) services have identified a gap in services available to people with developmental disabilities. Most direct services available in a DDA are delivered by paraprofessionals or Master's level professionals. Providers have suggested that there should be an optional service that could be delivered by bachelor's level social workers and would meet the objectives of the service of "Supportive Counseling" as identified in IDAPA 24.14.01, "Rules of the State Board of Social Work Examiners."

The proposed rule changes define the service of supportive counseling and identify staff qualifications, participant eligibility requirements, therapy goals, outcome measures, and service limitations for this new service.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason: it confers a benefit.

FEE SUMMARY: There is no fee or charge being imposed or increased in this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

There is no fiscal impact to the state general fund as a result of this rule change. However, under the companion Medicaid docket (Docket No. 16-0309-0603) the increased cost for addition of this new benefit is projected to be $11,875 per year.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, informal negotiated rulemaking was conducted with the Developmental Disabilities Council and Idaho Association of Developmental Disabilities Agencies (IADDA).

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Cameron Gilliland at (208) 334-5536.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, August 23, 2006.

DATED this 3rd day of May, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. DEFINITIONS -- P THROUGH Z.
For the purposes of these rules, the following terms are used as defined below: (7-1-06)

01. Paraprofessional. A person, such as an aide or therapy technician, who is qualified to assist a qualified professional in providing services to persons with developmental disabilities. (7-1-06)

02. Participant. A person who has been identified as having a developmental disability as defined in this chapter, and who is receiving services through a DDA. (7-1-06)

03. Person-Centered Planning Process. A meeting facilitated by the plan developer, comprised of family and individuals significant to the participant who collaborate with the participant to develop the plan of service. (7-1-06)

04. Person-Centered Planning Team. The group who develops the plan of service. This group includes, at a minimum, the participant and the service coordinator or plan developer chosen by the participant. The person-centered planning team may include others identified by the participant or agreed upon by the participant and the Department as important to the process. (7-1-06)

05. Plan Developer. A paid or nonpaid person identified by the participant who is responsible for developing an ISP and subsequent addenda that covers all services and supports, based on a person-centered planning process. (7-1-06)

06. Plan Monitor. A person who oversees the provision of services on the ISP on a paid or non-paid basis. The plan developer is the plan monitor unless there is a Service Coordinator, in which case the Service Coordinator assumes both roles. (7-1-06)

07. Plan of Service. An initial or annual plan that identifies services and supports. Plans are developed annually. In this chapter of rules, “plan of service” may refer to any of the following: IFSP, IPP, or ISP. (7-1-06)

08. Practitioner of the Healing Arts, Licensed. A licensed physician, physician assistant, or nurse practitioner. (7-1-06)

09. Prior Authorization (PA). A process for determining a participant's eligibility for

services and medical necessity prior to the delivery or payment of services in accordance with IDAPA 16.03.13, "Prior Authorization for Behavioral Health Services." (7-1-06)

10. Probe. A probe is data gathered on an intermittent basis, after a baseline is established, to measure a participant's level of independent performance as related to an identified objective. (7-1-06)

11. Program Implementation Plan. A plan that details how DDA goals from the plan of service will be accomplished. (7-1-06)

12. Provider. An agency, or an individual working for an agency, that furnishes DDA services under the provisions of these rules. (7-1-06)

13. Provider Status Review. The written documentation that identifies a participant's progress toward goals defined in the ISP. (7-1-06)

14. Provisional Certificate. A certificate issued by the Department to a DDA with deficiencies that do not adversely affect the health or safety of participants. A provisional certificate is issued contingent upon the correction of deficiencies in accordance with an agreed-upon plan. A provisional certificate is issued for a specific period of time, up to, and not exceeding, six (6) months. (7-1-06)

15. Psychotherapy. Treatment methods using a specialized, formal interaction between a qualified professional and an individual, family, or group in which a therapeutic relationship is established, maintained, or sustained to understand unconscious processes, or intrapersonal, interpersonal, and psychosocial dynamics, or the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions, and addictions. (7-1-06)

16. Qualified Professional. A professional delivering services within the scope of his practice and in accordance with the requirements of this chapter. (7-1-06)

17. Rehabilitation. The process of improving skills or level of adjustment to increase the person's ability to maintain satisfactory independent or dependent functioning. (7-1-06)

18. Repeat Deficiency. A violation or deficiency found on a resurvey or revisit to a DDA that was also found during the previous survey or visit. (7-1-06)

19. Service. Assessment, diagnosis, therapy, training, assistance, or support provided to a person with a developmental disability by a DDA. (7-1-06)

20. Service Coordination. Service coordination is an activity that assists individuals eligible for Medicaid in gaining and coordinating access to necessary care and services appropriate to the needs of an individual. The delivery of service coordination is governed by IDAPA 16.03.17, "Service Coordination." (7-1-06)

21. Service Coordinator. An individual who provides service coordination to a Medicaid-eligible participant, is employed by a service coordination agency, and meets the training, experience, and other requirements under IDAPA 16.03.17, "Service Coordination."

(7-1-06)

22. **Specific Skill Assessment**. A type of assessment used to determine the baseline or the need for further intervention for the discipline area being assessed. (7-1-06)

23. **Staff**. Employees or contractors of an agency who provide services, including those persons with whom the agency has a formal, written agreement. (7-1-06)

24. **Supervision**. Initial direction and procedural guidance by a qualified professional and periodic inspection of the actual work performed at the service delivery site. (7-1-06)

25. **Supportive Counseling**. A method used by qualified professionals to assist individuals with developmental disabilities to learn how to solve problems and make decisions about personal, social, relationship, and other interpersonal concerns. Supportive counseling does not seek to reach unconscious material. (7-1-06)T

2~~5~~6. **Supports**. Formal or informal services and activities, not paid for by the Department, that enable the individual to reside safely and effectively in the setting of his choice. (7-1-06)

(BREAK IN CONTINUITY OF SECTIONS)

601. GENERAL REQUIREMENTS FOR ASSESSMENT RECORDS.

01. **Completion of Assessments**. Assessments must be completed or obtained prior to the delivery of therapy in each type of service. (7-1-06)

02. **Update of Assessments**. Assessments or updates are required in disciplines in which services are being delivered and when recommended by a professional. (7-1-06)

03. **Psychological Assessment**. A current psychological assessment must be completed or obtained: (7-1-06)

a. When the participant is receiving a behavior modifying drug(s); (7-1-06)

b. Prior to the initiation of restrictive interventions to modify inappropriate behavior(s); (7-1-06)

c. Prior to the initiation of supportive counseling; (7-1-06)T

~~c~~d. When it is necessary to determine eligibility for services or establish a diagnosis; (7-1-06)

~~d~~e. When a participant has been diagnosed with mental illness; or (7-1-06)

~~e~~**f.** When a child has been identified to have a severe emotional disturbance. (7-1-06)

(BREAK IN CONTINUITY OF SECTIONS)

720. OPTIONAL SERVICES.
DDAs may opt to provide any of the following services: pharmacological management, psychiatric diagnostic interviews, community crisis supports, collateral contact, ~~*and*~~ Intensive Behavioral Intervention (IBI), and supportive counseling. All services must be provided by qualified individuals in accordance with the requirements in Section 420 of these rules.
~~*(7-1-06)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

726. SUPPORTIVE COUNSELING.

01. Psychological Assessment. The initial and ongoing need for the service of supportive counseling must be recommended in a current psychological assessment. (7-1-06)T

02. On Plan of Service. Supportive counseling must be provided in accordance with the requirements for the plan of service. The type, amount, frequency and duration of this service must be specified on the plan of service. (7-1-06)T

03. Staff Qualifications. Supportive counseling must be provided by a professional listed under Subsection 712.02 of these rules or by a licensed social worker (LSW). (7-1-06)T

72~~6~~7. -- 799. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.04.14 - RULES GOVERNING LOW INCOME HOME ENERGY ASSISTANCE PROGRAM

DOCKET NO. 16-0414-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Sections 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 USC Sections 8621 to 8629.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule.

The pending rule is being adopted as proposed. The original text of the temporary and proposed rule was published in the September 6, 2006, Idaho Administrative Bulletin, Vol. 06-9, pages 88 through 94.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. N/A

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1)(b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: These rule amendments are being made to meet deadlines in federal regulations and to confer a benefit to low-income residents of Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule or temporary rule, contact Genie Sue Weppner at (208) 334-5656.

DATED this 1st day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is September 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures

have been initiated. The action is authorized pursuant to Section 56-202, Idaho Code, and 42 U.S.C. Sections 8621 to 8629, also known as the Low-Income Home Energy Assistance Act of 1981.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Department has been directed by the federal government to remove barriers to the Low Income Home Energy Assistance Program in order to participate in the program. The following changes to the rules are:

1) **The requirement for energy conservation education and audit as a condition of participation is being removed;**
2) **To meet the current poverty levels, the benefit amounts and eligibility levels will be published and distributed through the Department's manual and website, and through community action agencies;**
3) **The LIHEAP Intake Manual was incorporated by reference into the chapter of rules; and**
4) **Households with children under six (6) years of age, individuals with disabilities, and individuals over sixty (60) years of age will be the target population for adjusted benefits.**

TEMPORARY RULE JUSTIFICATION: Pursuant to Sections 67-5226(1) (b) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To meet deadlines in federal regulations and to confer a benefit to low income residents of Idaho.

FEE SUMMARY: Pursuant to Section 67-5226(2), Idaho Code, the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

There is no anticipated fiscal impact to the state general fund and this program is 100% federally funded.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are required by federal law and are providing a benefit to low-income families in Idaho.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Genie Sue Weppner at (208) 334-5656.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 3rd day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, ID 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
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THE FOLLOWING IS THE TEXT FOR THE PENDING RULE

000. LEGAL AUTHORITY.
This program is authorized by ~~*Section 2602, Title XXVI, Pub. L. No. 97-203, also known as*~~ the Low-Income Home Energy Assistance Act of 1981, 42 U.S.C Sections 8621 to 8629, and by provisions of Section~~s~~ 56-202 ~~*and 56-203,*~~ Idaho Code~~*, which authorize the Department of Health and Welfare to assist low-income people of the state with financial assistance and to enter into contracts with the federal government to provide assistance*~~. ~~*(7-1-99)*~~(9-1-06)T

001. TITLE, ~~*AND*~~ SCOPE, AND LIMITATIONS.

01. Title. These rules are to be cited ~~*in full*~~ as ~~*Idaho Department of Health and Welfare Rules,*~~ IDAPA 16.04.14, "Rules Governing the Low Income Home Energy Assistance Program," and may also be known as LIHEAP. ~~*(7-1-99)*~~(9-1-06)T

02. Scope. The intent of the program is to provide assistance to eligible low income households particularly those with the lowest incomes, that pay the highest proportion of their income for home energy, primarily in meeting their immediate home energy needs. (7-1-99)

03. Program Limitation. This federally funded program does not entitle any household to a certain amount or form of assistance. An eligible participant household will receive one (1) benefit payment from the standard program funding each program year. ~~*(7-1-99)*~~(9-1-06)T

002. ~~*POLICY*~~ WRITTEN INTERPRETATIONS.
~~*It is the policy of the Idaho Department of Health and Welfare, to serve the citizens of Idaho and to distribute the Low Income Home Energy Assistance benefits in accordance with acceptable*~~

~~*standards. An eligible participant household will receive one (1) benefit payment from the regular program assistance.*~~ In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules. ~~*(3-15-02)*~~(9-1-06)T

003. ADMINISTRATIVE APPEALS.
Appeals and proceedings are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." (9-1-06)T

004. INCORPORATION BY REFERENCE.
The following document is incorporated by reference in this chapter of rule: Low Income Home Energy Assistance Program (LIHEAP) Intake Manual, 2006. The manual is available on the Internet at http://www.healthandwelfare.idaho.gov/Portals/_Rainbow/Manuals/SRBenefits/SR_eManuals.htm. The manual is also available at the mailing address listed in Section 005 of this rule, and at Community Action Agencies. (9-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (9-1-06)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (9-1-06)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (9-1-06)T

04. Telephone. (208) 334-5500. (9-1-06)T

05. Internet Website. Department Internet address is: "http://www.healthandwelfare.idaho.gov." (9-1-06)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." (9-1-06)T

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Public records in the custody of the Department of Health and Welfare are subject to disclosure, unless otherwise exempted by state or federal law. (9-1-06)T

007. (RESERVED).

008. AUDIT, INVESTIGATION, AND ENFORCEMENT.

In addition to any actions specified in these rules, the Department may audit, investigate, and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse, and Misconduct." (9-1-06)T

009. (RESERVED).

0~~03~~10. DEFINITIONS.
Definitions applicable to ~~IDAPA 16.04.14 are listed in Subsections 003.01 through 003.23~~ this chapter of rules. ~~(7-1-99)~~(9-1-06)T

~~**01. Application**. The action by which a participant indicates in writing to the Department a desire to receive Low Income Home Energy Assistance. The participant will be designated as the head of household on the application; and will be the recipient of benefits for the household. (7-1-99)~~

0~~2~~1. Community Action Agency. A private non-profit organization serving the low income population in specified counties of the state with which ~~DHW~~ the Department has entered into a contract for the provision of services for purposes of LIHEAP. ~~(7-1-99)~~(9-1-06)T

02. Crisis Assistance. Energy assistance provided to an eligible participant household to reduce or eliminate an energy related health threatening situation to the household. (9-1-06)T

03. Department. The Department of Health and Welfare or its designee. ~~(7-1-99)~~(9-1-06)T

~~**04. Eligible Participant Household**. A participant household which meets the standard of eligibility set forth in these rules.. (7-1-99)~~

~~**05. Eligible Subsidized Housing**. Public subsidized rental housing in which the tenant is responsible for all or a portion of their home energy costs. (7-1-99)~~

~~**06. Emergency Assistance**. Energy assistance provided to an eligible participant household to reduce/eliminate an energy related health threatening situation to the household. (3-15-02)~~

~~**07. Energy Burden**. The expenditures of the participant household for home energy when compared to the household's income. (7-1-99)~~

~~**08. Energy Supplier**. A vendor supplying home heating energy who is not a member of an eligible participant household. (7-1-99)~~

0~~9~~4. Fraud. Recipient fraud is indicated where there appears to be a deliberate attempt to conceal or misrepresent pertinent information which could affect eligibility or grant amounts. (7-1-99)

~~**10. Fuel**. A latent form of energy used to produce residential heat. (7-1-99)~~

~~11~~05. Head of Participant Household. The person designated by the household

members to receive energy assistance benefit in behalf of the household and in whose favor the energy assistance warrant is written. (7-1-99)

~~**12. Highest Home Energy Needs**. *The home energy requirements of participant household determined by taking into account both their energy burden and unique situation that results from having members of vulnerable populations, including very young children, individuals with disabilities and frail older individuals.* (7-1-99)~~

~~**13**~~**06. Income**. Income is the gross amount of moneys actually received in the participant household from all sources. (4-5-00)

~~**14. Ineligible Subsidized Housing**. *Public housing in which tenants' rental payments include all home energy costs.* (7-1-99)~~

~~**15. Overpayment**. *An incorrect energy assistance payment.* (7-1-99)~~

07. Intake Manual. Manual used by community action agencies for procedural policy and benefit calculation factors, which is published annually by the Department. (9-1-06)T

~~**16**~~**08. Participant**. An individual or group of individuals ~~*which*~~ who has made application for the Low Income Home Energy Program from the state of Idaho. ~~(7-1-99)~~(9-1-06)T

~~**17**~~**09. Participant Household**. A participant household is one (1) of the following: ~~(7-1-99)~~(9-1-06)T

a. An individual ~~*living*~~ who lives alone; or ~~(7-1-99)~~(9-1-06)T

b. A group of individuals who are living together as one (1) economic unit where residential energy is customarily purchased in common or ~~*who*~~ they make undesignated payments for energy in the form of rent. ~~(7-1-99)~~(9-1-06)T

1~~8~~0. Primary Fuel. The type of fuel declared by the participant household to be the major source of their home heating. (7-1-99)

~~**19. Proof of Income**. *Documentary proof to establish the participant household's financial eligibility for assistance.* (7-1-99)~~

~~**20. Vendor**. *An energy supplier or utility supplying home energy and who is not a member of an eligible participant household.* (7-1-99)~~

~~**21. Warrant**. *The document issued by the Department through the State Controller's Office as the benefit payment to LIHEAP eligible participant households.* (7-1-99)~~

~~**22. Wood User**. *An individual who cuts or buys wood for use as the primary source of home heat. Such participant households will receive a one (1) party warrant.* (7-1-99)~~

~~**23**~~**11. Undocumented Resident**. Individuals who enter~~*ing*~~ the United States illegally

~~that~~ and who have not obtained legal resident status. ~~(3-15-02)~~(9-1-06)T

~~**24.** **Utility**. A vendor of energy regulated by the Idaho Public Utilities Commission. (7-1-99)~~

~~**004. ABBREVIATIONS.**~~
~~Abbreviations applicable to IDAPA 16.04.14 are listed in Subsections 004.01 through 004.08. (7-1-99)~~

~~**01.** **AABD**. Aid to the Aged, Blind, and Disabled. (7-1-99)~~

~~**02.** **CAA**. The Community Action Agency. (7-1-99)~~

~~**03.** **Department**. The Department of Health and Welfare. (7-1-99)~~

~~**04.** **FS**. The Food Stamp program. (7-1-99)~~

~~**05.** **LIHEAP**. The Low Income Home Energy Assistance Program. (7-1-99)~~

~~**06.** **OMB**. The Federal Office of Management and Budget. (7-1-99)~~

~~**07.** **SSI**. The Supplemental Security Income Program. (7-1-99)~~

~~**08.** **TAFI**. Temporary Assistance to Families in Idaho. (7-1-99)~~

Section 005 has Been Renumbered and Moved to Section 105

0~~06~~11. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

~~0~~105. FORMS~~-- BY NUMBER AND A NAME~~.
~~For the purposes of determining participant LIHEAP eligibility, Department prescribed forms will be used.~~ A participant household will apply on Department prescribed forms and designate a head of household. ~~(7-1-99)~~(9-1-06)T

10~~5~~6. -- 149. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

152. NONFINANCIAL ELIGIBILITY REQUIREMENTS.

For the purpose of assistance under LIHEAP, the participant household must meet the following non-financial eligibility requirements. (7-1-99)

01. Residence. At the time the application is completed, the participant must reside in the state of Idaho. ~~*There is no durational residence requirement.*~~ LIHEAP benefits are not transferable to an out-of-state residence. ~~*(7-1-99)*~~(9-1-06)T

02. Living Situations. The participant household must reside in housing where they are ~~*vulnerable to a*~~ responsible for home energy costs and incur the costs either directly or as an undesignated portion of their rent. Living situations ~~*not vulnerable to*~~ where residents are not responsible for energy costs include~~,~~ hospitals~~;~~, nursing homes~~;~~, shelter homes, commercial boarding homes, and rehabilitation centers. ~~*(7-1-99)(9-1-06)T*~~

03. Native Americans. Native American households whose tribe has entered into a separate agreement with the federal funding agency and the Department to receive LIHEAP grant funds, are not entitled to benefits under this program unless: (7-1-99)

a. Tribal funds are not available. (7-1-99)

b. Funds are depleted and an emergency exists. (7-1-99)

04. Resident Status. At least one (1) household member must be a citizen or legal resident of the United States. As part of the application process, participants must sign a declaration, under penalty of perjury, attesting to the residency or citizenship status of all household members. (3-15-02)

~~***05. Energy Conservation Education**. As part of the application for LIHEAP assistance, the participant must participate in an energy conservation education session. (7-1-99)*~~

~~***06. Residential Weatherization Energy Audit**. Participant households must agree to have an energy audit performed on their residence to determine weatherization needs of the dwelling. When one (1) or more of the following conditions exist, a waiver to the energy audit will be granted to the household: (7-1-99)*~~

~~***a.** The participant household residence has previously been weatherized by the CAA. (7-1-99)*~~

~~***b.** The participant household does not own their residence and is unable to obtain an agreement from the property owner. (7-1-99)*~~

~~***c.** The participant household can document the existence of a medical or other condition which prohibits the CAA from performing the energy audit on their residence. (7-1-99)*~~

(BREAK IN CONTINUITY OF SECTIONS)

204. BENEFIT DETERMINATION.
Eligible participant households will have their LIHEAP benefit determined as follows: (3-20-04)

01. Actual Consumption Method. The actual consumption method is used if the eligible participant household heats its residence with either natural gas or electricity and has resided in the residence for one (1) year or longer. Household benefit is calculated by multiplying the energy consumption cost by an annual benefit calculation factor. Annual minimum and maximum benefits per household are published each year in the Intake Manual used for LIHEAP. (3-20-04)

02. Average Annual Cost Method. The average annual cost method is used when the eligible participant household's actual consumption cost is unknown, or it uses a heating source other than electricity or natural gas. Average cost is determined by information provided by energy suppliers throughout the state and is published as the Annual Heating Cost Chart which is available from the Department of Health and Welfare. The average cost is specific to county of residence and the household's heating source. Household benefit is calculated by multiplying the Average Annual Cost by an annual benefit calculation factor. (3-20-04)

03. Annual Benefit Calculation Factor. Annual benefit calculation factors are determined each year based on the amount of federal funding for the upcoming program year. The particular factor used for a household's benefit calculation is determined by the household's energy cost burden (high, medium or low) expressed as a percentage of annualized income. A heating burden of zero percent (0%) to five percent (5%) is ~~*considered*~~ low, six percent (6%) to ten percent (10%) is medium, and eleven percent (11%) or greater is high. Benefit calculation methodology and the current benefit calculation factors are published in the Intake Manual used for LIHEAP, available at the Department ~~*of Health and Welfare*~~ or on its website, and at community action agencies. ~~*(3-20-04)*~~(9-1-06)T

04. Adjusting LIHEAP Benefit. ~~*Add an adjusted benefit of twenty-five dollars ($25) to the base benefit of*~~ Households containing at least one (1) of the following~~:~~ may be eligible for an adjusted benefit. The adjusted benefit amounts and eligibility levels will be published annually in the Intake Manual used for LIHEAP, available at the Department or on its website, and at community action agencies. ~~*(3-20-04)*~~(9-1-06)T

a. Child under six (6) years of age. (4-5-00)

b. Individual with disabilities as declared on the LIHEAP application form. (4-5-00)

c. Individual sixty (60) years of age or older. (4-5-00)

~~***d.*** *More than one (1) member.* *(3-20-04)*~~

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.05.07 - INVESTIGATION AND ENFORCEMENT OF FRAUD, ABUSE, AND MISCONDUCT

DOCKET NO. 16-0507-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The effective date of the amendment to the temporary rule is July 1, 2006. This pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224 and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a pending rule and amended a temporary rule. The action is authorized pursuant to Section 56-202(b), 56-203(a) and (b), 56-209, 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and amending the temporary rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The changes to this chapter of rules:

1. **Clarify that there are no written interpretations for this chapter of rules;**
2. **Replace the term "recipient" with the term "participant" to make language consistent with other Department rules; and**
3. **Add the phrase "The provider" in the provider agreement section for clarity.**

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code, and is being republished following this notice. Rather than keep the temporary rule in place while the pending rule awaits legislative approval, the Department amended the temporary rule with the same revisions which have been made to the pending rule. Only the sections that have changes from the proposed text are printed in this bulletin. The original text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 517 through 526.

TEMPORARY RULE JUSTIFICATION: **Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To protect the public health, safety or welfare.**

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no anticipated fiscal impact for this rule promulgation.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule and the amendment to temporary rule, contact Mond Warren at (208) 334-5997.

DATED this 6th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PORPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed regular rulemaking procedures have been initiated. The action is authorized pursuant to Sections 56-202(b), 56-203(a) and (b), 56-209, 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

Date:	**Wednesday, August 16, 2006**	**Thursday, August 17, 2006**	**Tuesday, August 22, 2006**
Time:	**7:00 p.m.**	**7:00 p.m.**	**7:00 p.m.**
Place:	**Idaho Falls Public Library** **457 Broadway** **Idaho Falls, ID** **Phone: (208) 612-8455**	**Coeur d'Alene Inn** **Hayden Conference Room** **506 W Appleway Ave.** **Coeur d'Alene, ID**	**DHW - Region IV Office** **1720 Westgate Dr.** **Suite D, Room 119** **Boise, ID**

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

As part of the implementation of the "Medicaid Modernization and Simplification Act" (HB 776), approved by the 2006 Legislature, the Department has reorganized the investigation and enforcement rules regarding fraud, abuse, and misconduct, previously residing in the Medical Assistance chapter, and moved them into their own, separate chapter. These changes make the rules easier to find, navigate and use. These rules have been moved into IDAPA 16.05.07 and are entitled "Investigation and Enforcement of Fraud, Abuse, and Misconduct." In their new location, these rules continue to provide for the protection of the public health and safety of participants, help protect the integrity of the Medicaid program, and provide that appropriate actions be taken to protect the program recipients and

financial resources of the program.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(a), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: To protect the public health, safety or welfare.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. There is no anticipated fiscal impact for this rule promulgation.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these rules are being moved from a chapter that is being repealed to this new chapter without any substantive changes being made to the content.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Mond Warren at (208) 334-0609.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 29th day of June, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
The Idaho Department of Health and Welfare has the authority to establish and enforce rules to protect the integrity of the public assistance programs against fraud, abuse, and other misconduct under Sections 56-202(b), 56-203(a) and (b), 56-209, 56-209h, 56-227, 56-227A through D, 56-1001, and 56-1003, Idaho Code, and under federal regulations. (7-1-06)T

001. TITLE, SCOPE AND POLICY.

01. Title. The title of this chapter is IDAPA 16.05.07, "The Investigation and

Enforcement of Fraud, Abuse, and Misconduct." (7-1-06)T

02. Scope. This chapter is intended to protect the integrity of the public assistance programs by identifying instances of fraud, abuse, and other misconduct by providers and their employees, ~~*recipients*~~ *participants*, and by providing that appropriate action is taken to correct the problem. ~~*(7-1-06)T*~~(7-1-06)T

03. Policy. Action will be taken to protect both program ~~*recipients*~~ *participants* and the financial resources of the public assistance programs. Where minimum federal requirements are exceeded, it is the Department's intent to provide additional protections. Nothing contained within this chapter shall be construed to limit the Department from taking any other action authorized by law, including seeking damages under Section 56-227B, Idaho Code. ~~*(7-1-06)T*~~(7-1-06)T

002. WRITTEN INTERPRETATIONS.
~~*In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection as described in Sections 005 and 006 of these rules.*~~ *The Department has no written interpretations that apply to this chapter of rule according to Section 67-5201(19)(b)(iv), Idaho Code.* ~~*(7-1-06)T*~~(7-1-06)T

003. ADMINISTRATIVE APPEALS.
Appeals and proceedings for any Department actions are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." An appeal does not stay the action of the Department. (7-1-06)T

004. INCORPORATION BY REFERENCE.
42 CFR 455-23(b) is incorporated by reference into this chapter of rules. It is available from the Centers for Medicare and Medicaid Services (CMS), 7500 Security Blvd, Baltimore, MD, 21244-1850 or on the Code of Federal Regulations internet site at http://www.access.gpo.gov/nara/cfr/cfr-table-search.html. (7-1-06)T

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (7-1-06)T

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (7-1-06)T

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (7-1-06)T

04. Telephone. (208) 334-5500. (7-1-06)T

05. Internet Website Address. Department Internet address is: http://www.healthandwelfare.idaho.gov. (7-1-06)T

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUESTS.

01. Confidential Records. Any information about an individual covered by these rules and contained in Department records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records," and federal Public Law 103-209 and 92-544. (7-1-06)T

02. Public Records. The Department of Health and Welfare will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempt, as set forth in Section 9-340, Idaho Code, and other state and federal laws and regulations, all public records in the custody of the Department of Health and Welfare are subject to disclosure. (7-1-06)T

007. -- 009. (RESERVED).

010. DEFINITIONS AND ABBREVIATIONS.
For purposes of this chapter of rules, the following terms will be used as defined below. (7-1-06)T

01. Abuse or Abusive. Provider practices that are inconsistent with sound fiscal, business, or medical practices, and result in an unnecessary cost to the Medicaid program, in reimbursement for services that are not medically necessary or that fail to meet professionally recognized standards for health care, or in physical harm, pain or mental anguish to a medical assistance recipient. It also includes recipient practices that result in unnecessary cost to the Medicaid program, or recipient utilization practices which may endanger their personal health or safety. (7-1-06)T

02. Access to Documentation and Records. To review and copy records at the time a written request is made during normal business hours. Documentation includes all materials as described in Section 101 of these rules. (7-1-06)T

03. Claim. Any request or demand for payment of items or services under the state's medical assistance program, whether under a contract or otherwise. (7-1-06)T

04. Conviction. An individual or entity is considered to have been convicted of a criminal offense: (7-1-06)T

a. When a judgment of conviction has been entered against the individual or entity by a federal, state, or local court, regardless of whether there is an appeal pending or whether the judgment of conviction or other record relating to criminal conduct has been expunged; (7-1-06)T

b. When there has been a finding of guilt against the individual or entity by a federal, state, or local court; (7-1-06)T

c. When a plea of guilty or nolo contendere by the individual or entity has been accepted by a federal, state, or local court; or (7-1-06)T

d. When the individual or entity has entered into participation in a first offender,

deferred adjudication, or other arrangement or program where judgment of conviction has been withheld. (7-1-06)T

05. Department. The Idaho Department of Health and Welfare, its authorized agent or designee. (7-1-06)T

06. Exclusion. A specific person or provider will be precluded from directly or indirectly providing services and receiving reimbursement under Medicaid. (7-1-06)T

07. Fraud or Fraudulent. An intentional deception or misrepresentation made by a person with the knowledge that the deception could result in some unauthorized benefit to himself or some other person. (7-1-06)T

08. Knowingly, Known, or With Knowledge. A person, with respect to information or an action, who: has actual knowledge of the information or an action; acts in deliberate ignorance of the truth or falsity of the information or the correctness or incorrectness of the action; or acts in reckless disregard of the truth or falsity of the information or the correctness or incorrectness of the action. (7-1-06)T

09. Managing Employee. A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts the day-to-day operation of an institution, organization, or agency. (7-1-06)T

10. Medicaid. Idaho's Medical Assistance Program. (7-1-06)T

11. Medical Assistance. Payments for part or all of the cost of services funded by Titles XIX or XXI of the federal Social Security Act, as amended. (7-1-06)T

12. Ownership or Control Interest. A person or entity that: has an ownership interest totaling twenty-five percent (25%) or more in an entity; is an officer or director of an entity that is organized as a corporation; is a partner in an entity that is organized as a partnership; or is a managing member in an entity that is organized as a limited liability company. (7-1-06)T

13. Person. An individual, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private. (7-1-06)T

14. Program. The Medicaid Program or any part thereof, including Idaho's State Plan. (7-1-06)T

15. Provider. Any individual, organization or business entity furnishing medical goods or services in compliance with Department rules who has a Medicaid provider number and has entered into a written provider agreement with the Department. (7-1-06)T

16. Provider Agreement. A written agreement between the Department and a provider or group of providers of supplies or services. This agreement contains any terms or conditions deemed appropriate by the Department. (7-1-06)T

17. Recoup and Recoupment. The collection of funds for the purpose of recovering overpayments made to providers for items or services the Department has determined should not have been paid. The recoupment may occur through the collection of future claims paid or other means. (7-1-06)T

18. Sanction. Any abatement or corrective action taken by the Department which is appealable under Section 003 of these rules. (7-1-06)T

19. State Plan. The contract between the state and federal government under 42 U.S.C. section 1396a(a). (7-1-06)T

20. Title XIX. Title XIX of the Social Security Act, known as Medicaid, is a medical benefits program jointly financed by the federal and state governments and administered by the states. This program pays for medical assistance for certain individuals and families with low income and limited resources. (7-1-06)T

21. Title XXI. Title XXI of the Social Security Act, known as the State Children's Health Insurance Program (SCHIP). This is a program that primarily pays for medical assistance for low-income children. (7-1-06)T

011. -- 019. (RESERVED).

020. DEPARTMENT ACTIONS.
When an instance of fraud, abuse, or other misconduct is identified, the Department will take action to correct the problem as provided in this section. Such corrective action may include, denial of payment, recoupment, payment suspension, provider agreement suspension, termination of provider agreement, imposition of civil monetary penalties, exclusion, recipient lock-in, referral for prosecution, or referral to state licensing boards. (7-1-06)T

021. - 099. (RESERVED).

100. INVESTIGATION AND AUDITS.
Investigation and audits of provider fraud, abuse or misconduct conducted by the Department's Bureau of Audits and Investigations or its successor are governed under this chapter of rules. (7-1-06)T

01. Investigation Methods. Under Section 56-227(e), Idaho Code, the Department will investigate and identify potential instances of fraud, abuse, or other misconduct by any person related to involvement in the program. Methods may include: review of computerized reports, referrals to or from other agencies, health care providers or persons, or conducting audits and interviews, probability sampling and extrapolation, and issuing subpoenas to compel testimony or the production of records. Reviews may occur on either pre-payment or post-payment basis. (7-1-06)T

02. Probability Sampling. Probability sampling shall be done in conformance with generally accepted statistical standards and procedures. "Probability sampling" means the standard statistical methodology in which a sample is selected based on the theory of probability, a mathematical theory used to study the occurrence of random events. (7-1-06)T

03. Extrapolation. Whenever the results of a probability sample are used to extrapolate the amount to be recovered, the demand for recovery will be accompanied by a clear description of the universe from which the sample was drawn, the sample size and method used to select the sample, the formulas and calculation procedures used to determine the amount to be recovered, and the confidence level used to calculate the precision of the extrapolated overpayment. "Extrapolation" means the methodology whereby an unknown value can be estimated by projecting the results of a probability sample to the universe from which the sample was drawn with a calculated margin of error. (7-1-06)T

101. DOCUMENTATION OF SERVICES AND ACCESS TO RECORDS.

01. Documentation of Services. Providers must generate documentation at the time of service sufficient to support each claim or service, and as required by rule, statute, or contract. Documentation must be legible and consistent with professionally recognized standards. Documentation must be retained for a period of five (5) years from the date the item or service was provided. Documentation to support claims for services includes, but is not limited to, medical records, treatment plans, medical necessity justification, assessments, appointment sheets, patient accounts, financial records or other records regardless of its form or media. (7-1-06)T

02. Immediate Access to Records. Providers must grant to the Department and its agents, the U.S. Department of Health and Human Services and its agents, immediate access to records for review and copying during normal business hours. These records are defined in Subsection 101.01 of these rules. (7-1-06)T

03. Copying Records. The Department and its authorized agents may copy any record as defined in Subsection 202.01 of these rules. They may request in writing to have copies of records supplied by the provider. The requested copies must be furnished within twenty (20) working days after the date of the written request, unless an extension of time is granted by the Department for good cause. Failure to timely provide requested copies will be a refusal to provide access to records. (7-1-06)T

04. Removal of Records From Provider's Premises. The Department and its authorized agents may remove from the provider's premises copies of any records as defined in Subsection 101.01 of these rules. (7-1-06)T

102. -- 199. (RESERVED).

200. DENIAL OF PAYMENT.
The following are reasons the Department may deny payment. (7-1-06)T

01. Billed Services Not Provided or Not Medically Necessary. The Department may deny payment for any and all claims it determines are for items or services: (7-1-06)T

a. Not provided or not found by the Department to be medically necessary. (7-1-06)T

b. Not documented to be provided or medically necessary. (7-1-06)T

c. Not provided in accordance with professionally recognized standards of health care. (7-1-06)T

d. Provided as a result of a prohibited physician referral under 42 CFR Part 411, Subpart J. (7-1-06)T

02. Contrary to Rules or Provider Agreement. The Department may deny payment when services billed are contrary to Department rules or the provider agreement. (7-1-06)T

03. Failure to Provide Immediate Access to Records. The Department may deny payment when the provider does not allow immediate access to records as defined in Section 101 of these rules. (7-1-06)T

201. -- 204. (RESERVED).

205. RECOUPMENT.
The Department may recoup the amount paid for items or services listed in Section 200 of these rules. If recoupment is impracticable, the Department may pursue any available legal remedies it may have. Interest shall accrue on overpayments at the statutory rate set forth in Section 28-22-104, Idaho Code, from the date of the final determination of the amount owed for items or services until the date of recovery. (7-1-06)T

206. -- 209. (RESERVED).

210. SUSPENSION OF PAYMENTS PENDING INVESTIGATION.
The Department may suspend payments in whole or part in a suspected case of fraud or abuse pending investigation and conclusion of legal proceedings related to the provider's alleged fraud or abuse. When payments have been suspended under this section of rule, the Department will provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal. (7-1-06)T

01. Basis for Suspension of Payments. When the Department through reliable evidence suspects fraud or abuse, or when a provider fails to provide immediate access to records, Medicaid payments may be withheld or suspended. (7-1-06)T

02. Notice of Suspension of Payments. The Department may withhold payments without first notifying the provider of its intention to do so. The Department will send written notice according to 42 CFR 455-23(b) within five (5) days of taking such action. (7-1-06)T

03. Duration of Suspension of Payments. The withholding of payment actions under this section of rule will be temporary and will not continue after: (7-1-06)T

a. The Department or the prosecuting authorities determine there is insufficient evidence of fraud or willful misrepresentation by the provider; or (7-1-06)T

b. Legal proceedings related to the provider's alleged fraud or abuse are completed. (7-1-06)T

211. -- 219. (RESERVED).

220. PROVIDER AGREEMENT SUSPENSION.
In the event the Department identifies a suspected case of fraud or abuse, it may summarily suspend the provider agreement when such action is necessary to prevent or avoid immediate danger to the public health or safety. This provider agreement suspension temporarily bars the provider from participation in the medical assistance program, pending investigation and Department action. The Department will notify the provider of the suspension. The suspension is effective immediately upon written, electronic, or oral notification. When a provider agreement is suspended under this section of rule, the Department will provide for a hearing within thirty (30) days of receipt of any timely filed notice of appeal (7-1-06)T

221. -- 229. (RESERVED).

230. TERMINATION OF PROVIDER STATUS.
Under Section 56-209h, Idaho Code, the Department may terminate the provider agreement of, or otherwise deny provider status for a period of five (5) years from the date the Department's action becomes final to, any individual or entity who: (7-1-06)T

01. Submits an Incorrect Claim. Submits a claim with knowledge that the claim is incorrect, including reporting costs as allowable which were known to be disallowed in a previous audit, unless the provider clearly indicates that the item is being claimed to establish the basis for an appeal and each disputed item or amount is specifically identified. (7-1-06)T

02. Fraudulent Claim. Submits a fraudulent claim. (7-1-06)T

03. Knowingly Makes a False Statement. Knowingly makes a false statement or representation of material fact in any document required to be maintained or submitted to the Department. (7-1-06)T

04. Medically Unnecessary. Submits a claim for an item or service known to be medically unnecessary. (7-1-06)T

05. Immediate Access to Documentation. Fails to provide, upon written request by the Department, immediate access to documentation required to be maintained. (7-1-06)T

06. Non-Compliance With Rules and Regulations. Fails repeatedly or substantially to comply with the rules and regulations governing medical assistance payments. (7-1-06)T

07. Violation of Material Term or Condition. Knowingly violates any material term or condition of its provider agreement. (7-1-06)T

08. Failure to Repay. Has failed to repay, or was a managing employee or had an ownership or control interest in any entity that has failed to repay, any overpayments or claims previously found to have been obtained contrary to statute, rule, regulation, or provider agreement. (7-1-06)T

09. Fraudulent or Abusive Conduct. Has been found, or was a managing employee in any entity which has been found, to have engaged in fraudulent conduct or abusive conduct in connection with the delivery of health care items or services. (7-1-06)T

10. Failure to Meet Qualifications. Fails to meet the qualifications specifically required by rule or by any applicable licensing board. (7-1-06)T

231. -- 234. (RESERVED).

235. CIVIL MONETARY PENALTIES.
Under Section 56-209h, Idaho Code, the Department may assess civil monetary penalties against a provider, any officer, director, owner, and managing employee for conduct identified in Subsections ~~211~~*230*.01 through ~~211~~*230*.09 of these rules. The amount of penalties may be up to one thousand dollars ($1,000) for each item or service improperly claimed, except that in the case of multiple penalties the Department may reduce the penalties to not less than twenty-five percent (25%) of the amount of each item or service improperly claimed if an amount can be readily determined. Each line item of a claim, or cost on a cost report is considered a separate claim. These penalties are intended to be remedial, at a minimum recovering costs of investigation and administrative review, and placing the costs associated with non-compliance on the offending provider. ~~*(7-1-06)T*~~(7-1-06)T

236. -- 239. (RESERVED).

240. MANDATORY EXCLUSIONS FROM THE MEDICAID PROGRAM.
The Department will exclude from the Medicaid program any provider, entity or person that: (7-1-06)T

01. Conviction of a Criminal Offense. Has been convicted of a criminal offense related to the delivery of an item or service under a federal or any state health care program, including the performance of management or administrative services relating to the delivery of items or services under any such program. (7-1-06)T

02. Conviction of a Criminal Offense Related to Patient Neglect or Abuse. Has been convicted, under federal or state law, of a criminal offense related to the neglect or abuse of a patient, in connection with the delivery of a health care item or service, including any offense that the Department concludes entailed, or resulted in, neglect or abuse of patients. The conviction need not relate to a patient who is a program beneficiary. (7-1-06)T

03. Other Exclusions. Is identified by the Centers for Medicare and Medicaid Services (CMS) as having been excluded by another state or the Office of Inspector General or any person CMS directs the Department to exclude. (7-1-06)T

241. -- 244. (RESERVED).

245. TERMS OF MANDATORY EXCLUSIONS FROM THE MEDICAID PROGRAM.
Mandatory exclusions from the Medicaid program imposed under Subsections 240.01 and 240.02 of these rules, will be for not less than ten (10) years. The exclusion may exceed ten (10) years if aggravating factors are present. In the case of any mandatory exclusion of any person, if the

individual has been convicted on two (2) or more previous occasions of one (1) or more offenses for which an exclusion may be effected under this section, the period of exclusion will be permanent. (7-1-06)T

246. -- 249. (RESERVED).

250. PERMISSIVE EXCLUSIONS FROM THE MEDICAID PROGRAM.
The Department may exclude any person or entity from the Medicaid program for a period of not less than one (1) year: (7-1-06)T

01. Endangerment of Health or Safety of a Patient. Where there has been a finding by a governmental agency against such person or entity of endangering the health or safety of a patient, or of patient abuse, neglect or exploitation. (7-1-06)T

02. Failure to Disclose or Make Available Records. That has failed or refused to disclose, make available, or provide immediate access to the Department, or its authorized agent, or any licensing board, any records maintained by the provider or required of the provider to be maintained, which the Department deems relevant to determining the appropriateness of payment. (7-1-06)T

03. Other Exclusions. For any reason for which the Secretary of Health and Human Services, or his designee, could exclude an individual or entity. (7-1-06)T

251. -- 259. (RESERVED).

260. AGGRAVATING FACTORS.
For purposes of lengthening the period of mandatory exclusions and permissive exclusions from the Medicaid program, the following factors may be considered. This is not intended to be an exhaustive list of factors which may be considered: (7-1-06)T

01. Financial Loss. The acts resulted in financial loss to the program of one thousand five hundred dollars ($1,500) or more. The entire amount of financial loss to such program will be considered, including any amounts resulting from similar acts not adjudicated, regardless of whether full or partial restitution has been made to the program. (7-1-06)T

02. Time Acts Were Committed. The acts were committed over a period of one (1) year or more. (7-1-06)T

03. Adverse Impact. The acts had a significant adverse physical, mental or financial impact on one (1) or more program ~~*recipients*~~ *participants* or other individuals. ~~*(7-1-06)T*~~(7-1-06)T

04. Length of Sentence. The length of any sentence imposed by the court related to the same act. (7-1-06)T

05. Prior Record. The excluded person has a prior criminal, civil or administrative sanction record. (7-1-06)T

261. -- 264. (RESERVED).

265. REFUSAL TO ENTER INTO AN AGREEMENT.
The Department may refuse to enter into a provider agreement for the reasons described in Subsections 265.01 through 265.05 of this rule. (7-1-06)T

01. Convicted of a Felony. *The provider* has been convicted of a felony under federal or state law~~;~~. ~~*or*~~ ~~*(7-1-06)T*~~(7-1-06)T

02. Committed an Offense or Act Not in Best Interest of Medicaid ~~*Recipients*~~ *Participants*. *The provider* has committed an offense or act which the Department determines is inconsistent with the best interests of Medicaid ~~*recipients; or*~~ *participants.* ~~*(7-1-06)T*~~(7-1-06)T

03. Failed to Repay. *The provider* has failed to repay the Department monies which had been previously determined to have been owed to the Department~~;~~. ~~*or*~~ ~~*(7-1-06)T*~~(7-1-06)T

04. Investigation Pending. *The provider* has a pending investigation for program fraud or abuse~~;~~. ~~*or*~~ ~~*(7-1-06)T*~~(7-1-06)T

05. Terminated Provider Agreement. *The provider* was the managing employee, officer, or owner of an entity whose provider agreement was terminated under Section 230 of these rules. ~~*(7-1-06)T*~~(7-1-06)T

266. -- 269. (RESERVED).

270. MISCELLANEOUS CORRECTIVE ACTIONS.
The Department may take lesser action to investigate, monitor and correct suspected instances of fraud, abuse, over utilization, and other misconduct as provided in Subsections 270.01 through 270.03 of this rule. (7-1-06)T

01. Issuance of a Warning. Issuance of a warning letter describing the nature of suspected violations, and requesting an explanation of the problem and a warning that additional action may be taken if the action is not justified or discontinued. (7-1-06)T

02. Review. Prepayment review of all or selected claims submitted by the provider with notice that claims failing to meet written guidelines will be denied. (7-1-06)T

03. Referral. Referral to state licensing boards for review of quality of care and professional and ethical conduct. (7-1-06)T

271. -- 274. (RESERVED).

275. DISCLOSURE OF CERTAIN PERSONS.
Prior to entering into or renewing a provider agreement, or at any time upon written request by the Department, a provider must disclose to the Department the identity of any person described at 42 CFR 1001.1001. The Department may refuse to enter into or renew an agreement with any provider associated with any person so described. The Department may also refuse to enter into, or terminate, a provider agreement if it determines that the provider did not fully and accurately

make any disclosure required under this chapter of rule. (7-1-06)T

276. -- 279. (RESERVED).

280. PROVIDER NOTIFICATION.
When the Department determines actions defined in Sections ~~205~~ 200 through ~~217~~ 250 of these rules are appropriate, it will send written notice of the decision to the provider or person. The notice will state the basis for the action, the length of the action, the effect of the action on that person's ability to provide services under state and federal programs, and the person's appeal rights. ~~(7-1-06)T~~(7-1-06)T

281. -- 284. (RESERVED).

285. NOTICE TO STATE LICENSING AUTHORITIES.
The Department will promptly notify all appropriate licensing authorities having responsibility for licensing or certification of a Department action, and the facts and circumstances of that action. The Department may request certain action be taken and that the Department be informed of actions taken. (7-1-06)T

286. -- 289. (RESERVED).

290. PUBLIC NOTICE.
The Department will give notice of the action taken and the effective date to the public, appropriate beneficiaries, and may give notice as appropriate to related providers, the Quality Improvement Organization (QIO), institutional providers, professional organizations, contractors, other health insurance payors, and other agencies or Departmental divisions. (7-1-06)T

291. -- 299. (RESERVED).

300. DEPARTMENT OF HEALTH AND HUMAN SERVICES.
The Department will notify the Office of Inspector General within fifteen (15) days after a final action in which a person has been excluded or convicted of a criminal offense related to participation in the delivery of health care items or services under the program. (7-1-06)T

301. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.01 - RULES GOVERNING FAMILY AND CHILDREN'S SERVICES

DOCKET NO. 16-0601-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code; and Title 56, Chapter 8, Idaho Code - regarding "Hard-to-Place Children."

DESCRIPTIVE SUMMARY: **The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 259 through 287.**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: The changes to the out-of-state placement rules will result in savings in travel expenses of approximately $50,000 per year, for workers to visit children placed out of state. To estimate the impact to the state general fund for adoption and guardianship assistance rule changes, it was determined that there are five children who would be impacted in the 2005-2006 State Fiscal Year who would not qualify under this rule change. The total annual general fund expenditures for these children is approximately $15,000 per year.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5706.

DATED this 3rd day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections: 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-

7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, 56-1004, and 56-1004A, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than Wednesday, October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Several areas in the rules governing family and children's services have been amended and clarified to provide improved safety, permanency, and well-being for children in foster care, children being adopted, and their families.

Rules are being amended to:

1. Achieve consistency with statute on guardianship assistance;
2. Reflect "best practice" in the child protection rules and the adoption rules for out-of-state adoptions, home studies, support, supervision, and limits on state-funded adoption and guardianship assistance; and
3. Revise the foster care rules to modify the requirements in "Professional Foster Care" and delete references to discontinued community programs.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

The changes to the out-of-state placement rules will result in savings in travel expenses of approximately $50,000 per year, for workers to visit children placed out of state.

To estimate the impact to the state general fund for adoption and guardianship assistance rule changes, it was determined that there are five (5) children who would be impacted in the 2005-2006 State Fiscal Year who would not qualify under this rule change. The total annual general fund expenditures for these children is approximately $15,000 per year.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes are being made to be consistent with the Title 56, Chapter 8, Idaho Code, regarding "Hard to Place Children" and to reflect "best practice."

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments

must be directed to the undersigned and must be delivered on or before Wednesday, October 25, 2006.

DATED this 16th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
The Idaho Legislature has delegated to the Department, or the Board of Health and Welfare, or both jointly, the responsibility to establish and enforce such rules and methods of administration as may be necessary or proper to administer social services to people who are in need, under the following Sections: 16-1623, 16-2102, 16-2406, 16-2423, 16-2433, 39-1209 through 1211, 39-5603, 39-7501, 56-202(b), 56-203B, 56-204A, 56-803, 56-1003, ~~*and*~~ 56-1004, and 56-1004A, Idaho Code. ~~*(4-11-06)*~~( )

(BREAK IN CONTINUITY OF SECTIONS)

005. ~~*MANDATORY CRIMINAL HISTORY CHECKS*~~ (RESERVED).
~~*The following persons shall participate in a criminal history check in accordance with Idaho Department of Health and Welfare Rules, IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks": All current Department employees, applicants, transfers, reinstated former employees, student interns, promotes, contract employees, qualified individuals, volunteers, and others assigned to programs that involve direct contact with children. Programs within the Department that involve direct contact with children include, but are not limited to, the following: State Hospital South, Adolescent Program; all regionally operated day treatment programming staffed by personnel of the Family and Children's Services Programs and/or Mental Health Programs and Child Development Center Programs and others; and all other programs that include provision of services to children as an alternative to parental care for all or any portion of the day. "Others assigned" specifically refers to employees of the Department of Education or local school districts assigned to regional day treatment programming or institutional settings.*~~ ~~*(3-18-99)*~~

(BREAK IN CONTINUITY OF SECTIONS)

008. ~~009.~~ (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance With Department Criminal History and Background Check. All current Department employees, applicants, transfers, reinstated former employees, student interns, contract employees, Certified Adoption Professionals, volunteers, and others assigned to programs that involve direct contact with children or vulnerable adults as described in Section 39-5302, Idaho Code, must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." ( )

02. Availability to Work or Provide Service. Certain individuals are allowed to provide services after the self-declaration is completed as provided in Section 56-1004A, Idaho Code, except when they have disclosed a designated crime listed in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." The criminal history check requirements applicable to each provider type are found in the rules that state the qualifications or certification of those providers. ( )

03. Adoption. An individual applying to the Department to be an adoptive parent or petitioning the court for the adoption of a child must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks." ( )

010. DEFINITIONS AND ABBREVIATIONS A THROUGH E.
For the purposes of these rules ~~*contained*~~, ~~*in Idaho Department of Health and Welfare Rules, IDAPA 16.06.01, "Rules Governing Family and Children's Services,"*~~ the following terms ~~*and abbreviations*~~ are used as defined in ~~*Sections 010 through 013 of*~~ Section 010: ~~*(4-6-05)*~~( )

01. IV-E Foster Care. Child care provided in lieu of parental care in a foster home, children's agency or institution eligible to receive Aid to Dependent Children under Title IV-E of the Social Security Act. (3-18-99)

02. Adoption Assistance. Funds provided to adoptive parent(s) of children who have special needs ~~*and/*~~or who could not be adopted without financial or medical assistance. ~~*(5-3-03)*~~( )

03. Adoption Services. Protective services through which children are provided with permanent homes, under new legal parentage, including transfer of the mutual rights and responsibilities that prevail in the parent-child relationship. ~~*(5-3-03)*~~( )

04. Alternate Care. Temporary living arrangements, when necessary for a child to leave his own home, through a variety of foster care, respite care, residential treatment and institutional resources, in accordance with the protections established in Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980" as amended by Public Law 105-89, the Adoption and Safe Families Act of 1997, the Child Protective Act, Section 16-1601 et seq., Idaho Code, and the Indian Child Welfare Act. (3-30-01)

05. Alternate Care Plan. A federally required component of the Family Plan for children in alternate care. The alternate care plan contains elements related to reasonable efforts, the family's plan, child's alternate care provider, compelling reasons for not terminating parental rights, Indian status, education, immunization, medical and other information important to the day-to-day care of the child. (5-3-03)

06. Area of Concern. Circumstances that brought a child and family to the attention of the Department. These circumstances typically involve safety issues that put the child at risk of harm. (____)

0~~6~~7. Assessment. The first step in the planning process, ~~*which results in*~~ the outcome of which is the systematic documentation of the family's ~~*issues*~~ areas of concern, their strengths, and desired outcomes. ~~*(3-30-01)*~~(____)

0~~7~~8. Board. The Idaho State Board of Health and Welfare. (3-18-99)

0~~8~~9. Case Management. A change-oriented service to families that assures and coordinates the provision of family risk assessment, family case planning, treatment and other services, protection, advocacy, review and reassessment, documentation, and timely closure of a case. ~~*(3-18-99)*~~(____)

~~***09. Case Plan**. See "Family Plan". (3-18-99)*~~

~~***10. Central Office**. The state level administrative office of the Department of Health and Welfare located in Boise, Idaho. (3-18-99)*~~

1~~1~~0. Certified Adoption Professional (formerly "qualified individual"). An individual certified by the Department who meets the qualifications specified in Section 889 of these rules for completion of pre-placement adoption home studies, reports to the court under the Termination of Parent and Child Relationship and Adoption of Children Acts, and placement supervision reports. (3-20-04)

1~~2~~1. Child Mental Health. All of the following children under eighteen (18) years of age ~~*shall*~~ must be served without regard to income or type of health insurance: ~~*(3-30-01)*~~(____)

a. Those who have a serious emotional disturbance or a grave disability due to a serious mental illness; and (3-30-01)

b. Present a significant risk of harm to themselves or to others, due to their mental illness; and (3-30-01)

c. Because of their mental illness are at risk for out-of-home placements or are currently in out-of-home placement and lack adequate resources to participate in their community's non-public system of care; or (3-30-01)

d. Are involuntarily committed to the Department for out-of-home placement. (3-30-01)

1~~3~~2. Child Mental Health Services. Services provided in response to the needs of children with a serious emotional disturbance and their families. These services are provided in accordance with the provisions of Section 16-2402 et seq., Idaho Code, the "Children's Mental Health Services Act". (3-30-01)

1~~4~~3. Child Protection. All children under eighteen (18) who have been harmed or threatened with harm by a person responsible for their health or welfare through non-accidental physical or mental injury, sexual abuse (as defined by state law) or negligent treatment or maltreatment, including the failure to provide adequate food, clothing or shelter ~~*shall*~~ must be served without regard to income. ~~*(3-30-01)*~~(____)

1~~5~~4. Child Protective Services. Services provided in response to potential, alleged or actual abuse, abandonment or neglect of individuals under the age of eighteen (18) in accordance with the provisions of Section 16-1601 et seq., Idaho Code, the "Child Protective Act". (3-18-99)

1~~6~~5. Compact Administrator. The individual designated to coordinate interstate transfers of persons requiring special services in accordance with the provisions of Section 16-2101 et seq., Idaho Code; "Interstate Compact on the Placement of Children," Section 16-1901 et seq., Idaho Code; or the "Interstate Compact on Mental Health," Section 66-1201 et seq., Idaho Code; or the "Interstate Compact on Adoption and Medical Assistance," Section 39-7501 et seq., Idaho Code. (3-20-04)

~~***17. Concurrent Planning**. Planning which addresses a child's need for a permanent family by working toward family reunification while, at the same time, developing an alternative plan that will provide permanency for the child through adoption, guardianship, placement with a relative or other permanent placement. (3-30-01)*~~

~~***18. DHW Regions**. Seven (7) geographically defined regions which serve as administrative units for the delivery of social services through local Department local offices. (3-18-99)*~~

1~~9~~6. Day Care for Children. Care and supervision provided for compensation during part of a twenty-four (24) hour day, for a child or children not related by blood or marriage to the person or persons providing the care, in a place other than the child's or children's own home or homes. (3-18-99)

~~20~~17. Day Treatment Services. Intensive nonresidential services that include an integrated set of educational, clinical, social, vocational and family interventions provided on a regularly scheduled, typically daily, basis. (3-18-99)

~~21~~18. Department. The Idaho Department of Health and Welfare. (3-18-99)

~~22~~19. Deprivation. One of the factors used in determining Aid to Families with Dependent Children -- Foster Care (AFDC-FC) eligibility for children in foster care. Deprivation is a lack of, or interruption in, the maintenance, physical care, and parental guidance a child ordinarily receives from one (1) or both parents. A child is deprived by the continued absence of a parent, incapacity of a parent, death of a parent, unemployment or underemployment of the

principal wage earner parent. ~~(4-6-05)~~(____)

20. **Desired Result**. Behaviorally-specific description of how the family circumstances will look when the risk factors that brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (____)

2~~3~~1. **Director**. The Director of the Idaho Department of Health and Welfare or his designee. ~~(3-18-99)~~(____)

2~~4~~2. **Extended Family Member of an Indian Child**. As defined by the law, or custom of an Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen (18) and who is an Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent. (3-30-01)

011. DEFINITIONS AND ABBREVIATIONS F THROUGH K.
For the purposes of these rules, the following terms are used as defined in Section 011: (____)

01. **Family**. Parent(s), legal guardian(s), related individuals including birth or adoptive immediate family members, extended family members and significant other individuals, who are included in the family plan. (5-3-03)

02. **Family and Children's Services** ~~***(FACS)***~~. Those programs and services directed to families and children, administered by the Department and provided in accordance with these rules. ~~(3-18-99)~~(____)

03. **Family Assessment**. An ongoing process based on information gained through a series of meetings with a family to gain mutual perception of strengths and resources that can support them in creating long-term solutions related to identified service needs and~~/or~~ safety ~~*issues that threaten*~~ threats to family integrity, unity, or the ability to care for their members. ~~(3-18-99)~~(____)

04. **Family Case Record**. Electronic and hard copy compilation of all documentation relating to a family, including, but not limited to, legal documents, identifying information, and evaluations. (3-30-01)

~~***05.*** ***Family-Centered Services****. An approach to the delivery of social services that focuses on families rather than individuals. Services are based on assessment of the entire family and a negotiated family plan designed to strengthen and maintain the family, while ensuring the safety, well being and permanency of children.*~~ ~~(3-30-01)~~

0~~6~~5. **Family (Case) Plan**. Also referred to as a family service plan. A written document that serves as the guide for provision of services. The plan, developed with the family, clearly identifies who does what, when, how and why. The family plan incorporates any special plans made for individual family members. If the family includes an Indian child, or child's tribe, tribal elders ~~*and/*~~or leaders should be consulted early in the plan development. ~~(3-30-01)~~(____)

0~~7~~6. **Family Services Worker**. Any of the direct service personnel, including social workers, psychologists, counselors and family therapists, working in regional Family and

Children's Services Programs. (3-20-04)

0~~8~~7. **Field Office**. A Department of Health and Welfare service delivery site. (3-18-99)

08. **FOCUS (Family Oriented Community User System)**. This is the Department's computer information system used by Family and Children's Services personnel to maintain federally-required child welfare information. FOCUS provides a case management system for Child Protection, Adoptions, Children's Mental Health, Interstate Compact, and Independent Living for the Department. ( )

09. **Goal**. A statement of the long term outcome or plan for the child and family. (3-18-99)

10. **Guardianship Assistance**. State benefits provided to legal guardian(s) for the support of a child for whom efforts to place for adoption have been unsuccessful and who would otherwise remain in the guardianship of the Department of Health and Welfare. For a child to come into the Department's guardianship, parental rights must have been terminated. ~~(5-3-03)~~( )

11. **Immediate Safety Assessment**. Standardized protocol for contact between a family services worker and a family to objectively determine if safety threats, risks, or immediate service needs exist that require further Family and Children's Services response. ( )

1~~1~~2. **Independent Living**. Services provided to eligible foster or former foster youth ages fifteen (15) to twenty-one (21) designed to support a successful transition to adulthood. (3-30-01)

1~~2~~3. **Indian**. Any person who is a member of an Indian tribe or who is an Alaska Native and a member of a Regional Corporation as defined in 43 U.S.C. 1606. (3-18-99)

1~~3~~4. **Indian Child**. Any unmarried person who is under the age of eighteen (18) who is: (3-18-99)

a. A member of an Indian tribe, or (3-18-99)

b. Eligible for membership in an Indian tribe and the biological child of a member of an Indian tribe. (3-18-99)

1~~4~~5. **Indian Child Welfare Act (ICWA)**. The Indian Child Welfare Act, 25 U.S.C. 1901, et seq. (3-18-99)

1~~5~~6. **Indian Child's Tribe**. (3-18-99)

a. The Indian tribe in which an Indian child is a member or eligible for membership, or (3-18-99)

b. In the case of an Indian child who is a member of or eligible for membership in more than one (1) tribe, the Indian tribe with which the Indian child has the more significant

contacts. (3-18-99)

1~~6~~7. Indian Tribe. Any Indian Tribe, band, nation, or other organized group or community of Indians recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in 43 U.S.C. 1602(c). (3-18-99)

~~***17. Information and Referral Services**. A service which enables individuals to gain access to human services through providing accurate, current information on community and Department resources. (3-30-01)~~

18. Intercountry Adoption Act of 2000 (P.L. 106-279). Federal law designed to protect the rights of, and prevent abuses against children, birth families, and adoptive parents involved in adoptions (or prospective adoptions) subject to the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, and to insure that such adoptions are in the children's best interests; and to improve the ability of the federal government to assist U.S. citizens seeking to adopt children from abroad and residents of other countries party to the Convention seeking to adopt children from the United States. (5-3-03)

19. Interethnic Adoption Provisions of 1996 (IEPA). IEPA prohibits delaying or denying the placement of a child for adoption or foster care on the basis of race, color or national origin of the adoptive or foster parent(s), or the child involved. (5-3-03)

20. Interstate Compact on the Placement of Children (ICPC). Interstate Compact on the Placement of Children (ICPC) in Chapter 21, Title 16, Idaho Code, ensures that the jurisdictional, administrative and human rights obligations of interstate placement or transfers of children are protected. (3-20-04)

~~***21. Issue**. Circumstances which brought a child and family to the attention of the Department. These circumstances typically involve safety issues which put the child at risk of harm. (3-30-01)~~

2~~2~~1. Kin. Non-relatives who have a significant, family-like relationship with a child. Kin may include godparents, close family friends, clergy, teachers and members of a child's Indian tribe. Also known as fictive kin. (3-30-01)

~~***23. Kinship Care**. Alternative care that is provided by kin. (3-30-01)~~

012. DEFINITIONS AND ABBREVIATIONS L THROUGH R.
For the purposes of these rules, the following terms are used as defined in Section 012: ( )

01. Legal Guardianship. A judicially created relationship, including one made by a tribal court, between a child and a relative or non-relative caretaker which is intended to be permanent and self-sustaining as evidenced by the transfer to the caretaker of the following parental rights with respect to the child: protection, education, care and control of the person, custody of the person, and decision making. The term "legal guardian" means the caretaker in such a relationship. For purposes of these rules a child must be in Department guardianship at the time the Petition for Legal Guardianship is filed with the court. Department guardianship may

only take place when there has been a termination of parental rights. (5-3-03)

02. **Licensed**. Facilities or programs ~~being~~ are licensed in accordance with the provisions of ~~Idaho Department of Health and Welfare Rules~~ IDAPA 16.06.02, "Rules ~~and~~ Governing Standards for Child Care Licensing." ~~(3-18-99)~~(____)

03. **Licensing**. See ~~Idaho Department of Health and Welfare Rules~~ IDAPA 16.06.02, "Rules ~~and~~ Governing Standards for Child Care Licensing," Section 100. ~~(3-18-99)~~(____)

04. **Medicaid**. See "Title XIX." (3-30-01)

05. **Multiethnic Placement Act of 1994 (MEPA)**. MEPA prohibits states or public and private foster care and adoption agencies that receive federal funds from delaying or denying the placement of any child solely on the basis of race, color or national origin. (3-18-99)

~~**06.** **Objective**. Behaviorally specific description of how the family circumstances will look when the risk factors which brought a child and family to the Department's attention, either no longer exist or are significantly reduced. (3-30-01)~~

0~~7~~6. **Parent(s)**. The person(s) who, by birth or through adoption, is considered legally responsible for a child. For purposes of these rules, when it is necessary to be more specific, identifiers will be added to parent(s): birth parent(s), foster parent(s), adoptive parent(s), step-parent(s), and pre-adoptive parent(s). The term "legal guardian(s)" is not included in the definition of parent(s). (3-20-04)

0~~8~~7. **Permanency Planning**. A primary function of family services initiated in all cases to identify programs, services and activities designed to establish permanent home and family relationships for children within a reasonable amount of time. (3-18-99)

0~~9~~8. **Personal Care Services (PCS)**. Services to eligible Medicaid recipients that involve personal and medically oriented tasks dealing with the physical or functional impairments of the individual. (3-18-99)

1~~0~~9. **P.L. 96-272**. Public Law 96-272, the federal "Adoption Assistance and Child Welfare Act of 1980." (3-30-01)

1~~1~~0. **P.L. 105-89**. Public Law 105-89, the federal "Adoptions and Safe Families Act of 1997", amends P.L. 96-272 and prohibits states from delaying or denying cross-jurisdictional adoptive placements with an approved family. (3-30-01)

1~~2~~1. **Planning**. An orderly rational process which results in identification of goals and formulation of timely strategies to fulfill such goals, within resource constraints. (3-30-01)

~~**13.** **Prevention**. Programs, services and activities aimed at preventing child abuse and neglect and severe emotional disturbance. (3-30-01)~~

~~**14.** **Protective Services**. To provide assistance in response to potential, actual or alleged neglect, abuse or exploitation of children. (3-18-99)~~

1~~5~~2. Purchase of Services. Provision of services to children and families by local agencies or individuals who contract with DHW. (3-30-01)

1~~6~~3. Qualified Expert Witness--ICWA. A person who is most likely to be a qualified expert witness in the placement of an Indian child is: (3-18-99)

a. A member of the Indian child's tribe who is recognized by the tribal community as knowledgeable in tribal customs pertaining to family organization and child rearing practices; (3-18-99)

b. An individual who is not a tribal member who has substantial experience in the delivery of child and family services to Indians and extensive knowledge of prevailing social and cultural standards and child rearing practices within the Indian child's tribe; (3-18-99)

c. A professional person who has substantial education and experience in a pertinent specialty area and substantial knowledge of prevailing social and cultural standards and child rearing practices within the Indian community; or (3-18-99)

d. An individual regarded as being a qualified expert who is referred by the Indian child's tribe, the Department's ICWA Specialist, or the Bureau of Indian Affairs. (3-18-99)

1~~7~~4. Relative. Person related to a child by blood, marriage, or adoption. (3-30-01)

1~~8~~5. Reservation. Indian country as defined in 18 U.S.C. Section 1151, and any lands, not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation. Such term includes but is not limited to the Kootenai Reservation, the Coeur d'Alene Reservation, the Nez Perce Reservation, the Duck Valley Reservation, and the Shoshone-Bannock Reservation. (3-18-99)

1~~9~~6. Respite Care. Time limited care provided to children. Respite care is utilized in circumstances which require short term, temporary placement of a child from the home of their usual care giver to that of another licensed or agency approved family. In general, the duration of a respite placement is from one (1) to fourteen (14) days. (3-30-01)

~~***20. Risk Assessment**. Standardized protocol for contact between a family services worker and a family to objectively determine if safety issues, risk issues or immediate service needs exist, which require further Family and Children's Services response. (3-30-01)~~

013. DEFINITIONS AND ABBREVIATIONS S THROUGH Z.
For the purposes of these rules, the following terms are used as defined in Section 013: ( )

01. SSI (Supplemental Security Income). Income maintenance grants for eligible persons who are aged, blind or disabled. These grants are provided under Title VI of the Social Security Act and are administered by the Social Security Administration and local Social Security Offices. (3-18-99)

02. Safety Plan. Plan developed by the Department and a family which assures the immediate safety of a child who has been determined to be conditionally safe or unsafe.(3-30-01)

03. Serious Emotional Disturbance (SED). An emotional or behavioral disorder or a neuropsychiatric condition which results in a serious disability, which requires sustained treatment interventions and causes the child's functioning to be impaired in at least one (1) of the following areas: thought, perception, affect and behavior. A disorder ~~*shall be*~~ is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment ~~*shall be*~~ is assessed using the Child and Adolescent Functional Assessment Scale (CAFAS). Substantial impairment ~~*shall*~~ requires a full eight (8) scale score of eighty (80) or higher with "moderate" impairment in at least one (1) of the following three (3) scales: Self-harmful behavior; Moods/ emotions; or thinking. A substance abuse disorder, ~~*or*~~ conduct disorder, ~~*and/*~~or developmental disorder, alone does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. ~~*(3-20-04)*~~(____)

04. Social Service Block Grant. The social service block grant funds are federal funds provided to states to assist in the development of comprehensive social service programs to help those with special needs to achieve and maintain a greater degree of economic self support and self reliance, to prevent neglect, abuse, or exploitation of children and adults who are unable to protect their own interests, to prevent or reduce inappropriate institutional care, and to secure referral or admission for institutional care when other forms of care are not appropriate. (3-18-99)

05. TAFI. Temporary Assistance to Families in Idaho. (3-18-99)

06. Target Population. Group of persons, residing within a defined geographical area, who are identified as being at risk for an adverse social or health condition or combination of conditions and whom the program is designed to serve. (3-18-99)

07. Title IV-E. Title under the Social Security Act which provides funding for foster care maintenance and adoption assistance payments for certain eligible children. (3-20-04)

08. Title XIX (Medicaid). Title under the Social Security Act which provides "Grants to States for Medical Assistance Programs". (3-18-99)

09. Title XXI. (Children's Health Insurance Program). Title under the Social Security Act which provides access to health care for uninsured children under the age of nineteen (19). (3-18-99)

10. Tribal Court. A court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings. (3-18-99)

11. Unmarried Parents' Services. Unmarried parent(s) services are aimed at achieving or maintaining self-reliance or self-support for unmarried parent(s). These services include counseling for all unmarried parent(s) who need such service in relation to their plans for their children and arranging for and~~*/or*~~ paying for prenatal and confinement care for the well-being of the parent and infant. ~~*(5-3-03)*~~(____)

12. Voluntary Services Agreement. A written and executed agreement between the Department and parent(s) or legal guardian(s) regarding the goal, ~~issues~~ areas of concern, ~~objectives~~ desired results, and task responsibility, including payment. A children's mental health family services plan is the Voluntary Service Agreement. ~~(5-3-03)~~(____)

014. -- 019. (RESERVED).

020. GENERAL REQUIREMENTS APPLICABLE TO ALL FAMILY AND CHILDREN'S SERVICES PROGRAMS.

01. Information, Referral and Screening. All residents of the state of Idaho, regardless of the duration of their residency or their income ~~shall be~~ are entitled to receive, upon referral or request: ~~(3-30-01)~~(____)

a. Accurate and current information about services to children and families provided through the Department. (3-18-99)

b. Referral to other appropriate public or private services available in the community; and (3-18-99)

c. A screening to determine service needs and safety ~~issues~~ threats that can be addressed through Family and Children's Services. ~~(3-18-99)~~(____)

02. Initiating Family and Children's Services. Family and children's services are initiated upon referral for services that the program is legally mandated to provide or after completion of a written voluntary request for services. Efforts ~~shall~~ will be made to identify any Indian children in the family and all possible tribes in which a child may be a member or eligible for membership. ~~(3-18-99)~~(____)

03. Individual Authorized to Request Voluntary Services. Requests for voluntary services ~~shall~~ must be made by a family member or by an authorized representative, or by someone acting on behalf of an incompetent or incapacitated person. ~~(3-18-99)~~(____)

04. Record of Request for Services. The date of referral or request for services ~~shall~~ will be documented in the records of the field office. ~~(3-18-99)~~(____)

05. Information to Be Provided to Family. Upon referral or application for services, the family services worker ~~shall~~ must inform the family that: (3-18-99)

a. They have the right to accept or reject services offered by the Department, except those services imposed by law or by a court order; (3-18-99)

b. Fees may be charged for certain services, and that the parent(s) or legal guardian(s) has financial responsibility for the child in care; (5-3-03)

c. They have the right to pursue an administrative appeal of any decision of Family and Children's Services relating to them, including but not limited to any decision not to provide

services or to discontinue planned services; the Department's failure to act upon a referral or request for services within thirty (30) days; or an decision to remove a child from an alternate care placement unless court-ordered or court-authorized. (3-18-99)

021. -- 029. (RESERVED).

030. CORE FAMILY AND CHILDREN'S SERVICES.
The following core services are the state and federally mandated services provided by or through regional Family and Children's Services offices: (3-30-01)

01. Crisis Services. Crisis Services are an immediate response to assure safety when a child is believed to be in imminent danger as a result of child abuse or neglect or to be in imminent danger of causing life-threatening harm to self or someone else due to a serious emotional disturbance. Crisis services require immediate access to services, twenty-four (24) hours per day, seven (7) days per week to assess risk and place in alternate care, if necessary, to assure safety for the child. (3-30-01)

02. Service Management. Also referred to as case management. The goals of service management are to assure and coordinate family assessment, service planning, treatment and other services, protection of children, planning for permanency, advocacy, review and reassessment, documentation and timely closure of cases. (3-30-01)

03. Screening Services. Initial contact with families and children to gather information to determine whether or not the child meets eligibility criteria to receive services as a member of the target population for Child Protection, Adoptions, and/or Children's Mental Health Services. When eligibility criteria is not met for Department mandated services, appropriate community referrals are made. (3-30-01)

04. Assessment and Safety/Service Planning Services. Process in which the safety ~~*issues*~~ threats the family's concerns, strengths, and resources are identified. Based on this assessment, a written plan is developed together by the worker, the family and other interested parties. Each plan will identify a long-term goal, behaviorally specific and measurable ~~*objectives*~~ desired results, specific tasks which identify who, how, and when the tasks will be completed. ~~*(3-30-01)*~~(____)

05. Preventative Services. Community-based services which support children and families and are designed to reduce the risk of child abuse and neglect as well as serious emotional disturbance. These services can involve direct services, but are primarily implemented through community education, and partnerships with other community agencies such as schools and courts. (3-30-01)

06. Court Ordered Services. These services primarily involve court-ordered investigations/assessments of situations where children are believed to be at risk due to child abuse or neglect or a harm to themselves or others due to the presence of a severe emotional disturbance. (3-30-01)

07. Alternate Care (Placement) Services. Temporary living arrangements outside of the family home for children and youth who are victims of child abuse or neglect or children and

youth with a severe emotional disturbance. These out of home placements are arranged for and financed in full or in part by the Department. Alternate care is initiated through either a court order or voluntarily through an out-of-home placement agreement. Payment ~~*shall*~~ will be made on behalf of a child placed in the licensed home of an individual or relative, a public or private child care institution, a home licensed, approved or specified by an Indian child's tribe, or in a state-licensed public child care institution accommodating no more than twenty-five (25) children. Payments may be made to individuals or to a public or private child placement or child care agency. ~~*(3-30-01)*~~( )

08. Community Treatment Services. Services provided to a child and family in a community-based setting which are designed to increase the strengths and abilities of the child and family and to preserve the family whenever possible. Services include, but are not limited to: respite care; family preservation; psychosocial rehabilitative services, companion services and day treatment. (3-30-01)

09. Interstate Compact on Out-of-State Placements. Where necessary to encourage all possible positive contacts with family, including extended family, placement with family members or others who are outside the state of Idaho ~~*shall*~~ will be considered. On very rare occasion the Department may contract with a residential facility out of state if it best serves the needs of the child and is at a comparable cost to facilities within Idaho. When out-of-state placement is considered in the permanency planning for a child, such placement ~~*shall*~~ will be coordinated with the respective interstate compact administrator according to the provisions of Section 16-2101 et seq., Idaho Code, the "Interstate Compact on the Placement of Children" and Section 66-1201 et seq., Idaho Code, the "Interstate Compact on Mental Health." Placements ~~*shall*~~ must be in compliance with all state and federal laws. ~~*(3-30-01)*~~( )

10. Independent Living. The assessment, planning, and provision of services to eligible youth to promote self-reliance and successful transition to adulthood. Eligibility requirements for Independent Living services include: youth must be between fifteen (15) and twenty-one (21) years of age; youth's care must be the responsibility of the Department or tribal agency as established by a court order or voluntary agreement with the youth's family; and placed in foster care or similar setting for ninety (90) consecutive days. Once established, a youth's eligibility is maintained up to their twenty-first birthday, regardless of whether they continue to be the responsibility of the Department, tribe, or are in foster care. (3-30-01)

11. Adoption Services. Department services designed to promote and support the permanency of children with special needs through adoption. This involves the legal and permanent transfer of all parental rights and responsibilities to the family assessed as the most suitable to meet the needs of the individual child. Adoption services also seeks to build the community's capacity to deliver adoptive services. (3-30-01)

12. Administrative Services. Regulatory activities and services which assist the Department in meeting the goals of safety, permanency, health and well-being for children and families. These services include but are not limited to: (3-30-01)

a. Child care licensing; (3-30-01)

b. Day care licensing; (3-30-01)

c. Community development; (3-30-01)

d. Contract development and monitoring; and (3-30-01)

e. Pre-authorization of care. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

050. PROTECTIONS AND SAFEGUARDS FOR CHILDREN AND FAMILIES. The federal and state laws which are the basis for these rules include a number of mandatory protections and safeguards which are intended to assure timely permanency for children and to protect the rights of children, their families and their tribes. (3-30-01)

01. Reasonable Efforts. Services offered or provided to a family intended to prevent or eliminate the need for removal of the child from the family, to reunify a child with their family, to finalize a permanent plan, or prevent a seriously emotionally disturbed child from having to move to a more restrictive setting. Efforts must be made as follows and specifically documented by the Department in reports to the court. The court will make the determination of whether or not the Department's efforts were reasonable: (5-3-03)

a. Efforts to prevent or eliminate the need for a child to be removed from his home; and (5-3-03)

b. Efforts to return a child home are not required due to a judicial determination of aggravated circumstances; and (5-3-03)

c. Efforts to finalize a permanent plan, so that each child in the Department's care will have a family with whom the child can have a safe and permanent home. (5-3-03)

02. Active Efforts. For an Indian child, a description of the active efforts made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family; that these efforts have proved unsuccessful; and that based on qualified expert information, continued custody by the parent(s) or Indian custodian(s) is likely to result in serious emotional or physical damage to the child. (5-3-03)

03. ICWA Preferences. If appropriate, application of the placement preference for placement in accordance with the Indian Child Welfare Act, or a detailed explanation of good cause for not applying the preferences. (3-18-99)

04. Least Restrictive Setting. Efforts ~~*shall*~~ will be made to assure that any child in the Department's care, especially those children in care due to an emotional or behavioral disturbance, reside in the least restrictive, most family-like setting possible. Placement ~~*shall*~~ will be made in the least restrictive setting and in close proximity to the parent(s) or if not, written justification that the placement is in the best interest of the child. For an Indian child, placement in

the least restrictive setting is that setting which most approximates a family and is within reasonable proximity to the child's home taking into account any special needs of the child. ~~(5-3-03)~~(____)

05. Legal Requirements for Indian Children. In the case of an Indian child, notice of the pending proceeding ~~*shall*~~ must be sent by Certified Mail, Return Receipt Requested to the parent(s) or Indian custodian(s) and the Indian child's tribe, including notice of their right to intervene; their right to twenty (20) days additional time to prepare for the proceeding; the right to appointment of counsel if the parent(s) or Indian custodian(s) is indigent; the right to examine all documents filed with the court upon which placement may be based; and the right to withdraw consent to a voluntary foster placement. ~~(5-3-03)~~(____)

06. Visitation for Child's Parent(s) or Legal Guardian(s). Visitation arrangements ~~*shall*~~ must be provided to the child's parent(s) or legal guardian(s) unless visitation is contrary to the child's safety. ~~(5-3-03)~~(____)

07. Notification of Change in Placement. Written notification to the child's parent(s) or legal guardian(s) within seven (7) days of a change of placement of the foster child if a child is relocated to another foster care setting, or similar notice to the parent(s) or Indian custodian(s) of an Indian child, and the Indian child's tribe, which includes the information described in Section 051 of these rules entitled Notice Required for ICWA. (5-3-03)

08. Notification of Change in Visitation. Written notification to the child's parent(s) or legal guardian(s) if there is to be a change in their visitation schedule with their child or ward in foster care. (5-3-03)

09. Notification of Right to Participate and Appeal. Written notification to the child's parent(s) or legal guardian(s) ~~*shall*~~ must be made regarding their right to discuss any changes and the opportunity to appeal if they disagree with changes in placement or visitation. ~~(5-3-03)~~(____)

10. ICWA Placement Preferences. Compliance with the foster care placement preferences of the Indian Child Welfare Act. (3-18-99)

11. Compliance with Requirements of the Multiethnic Placement Act and Interethnic Adoption Provisions. (3-30-01)

12. Family Decision Making and Plan Development. (3-30-01)

a. A family plan ~~*shall*~~ will be completed within thirty (30) days of the date the case was opened. ~~(3-30-01)~~(____)

b. Families ~~*shall*~~ will be given ample opportunity to participate in the identification of ~~*issues*~~ areas of concern, their strengths and developing service ~~*objectives*~~ goals and tasks. The family plan and any changes to it ~~*shall*~~ must be signed and dated by the family. If the family refuses to sign the plan, the reason for their refusal ~~*shall*~~ will be documented on the plan. ~~(3-30-01)~~(____)

c. Plans are to be reviewed with the family no less frequently than once every three (3) months. When there are major changes to the plan including a change in the long term goal, the family plan must be renegotiated by the Department and the family as well as signed by the family. A new plan must be negotiated at least annually. (3-30-01)

13. Compelling Reasons. Reasons why the parental rights of a parent of a child in the Department's care and custody should not be terminated when the child has been in the custody of the Department for fifteen (15) out of the most recent twenty-two (22) months. These reasons must be documented in the Alternate Care Plan, in a report to the court, and the court must make a determination if the reasons are sufficiently compelling. A compelling reason must be documented when a child's plan for permanency is not adoption, guardianship, or return home. When compelling reasons are not appropriate, the petition for termination of parental rights must be filed by the end of the child's fifteenth month in foster care. (5-3-03)

14. ASFA Placement Preferences. The following placement preferences will be used when recommending and making permanency decisions: (3-30-01)

a. Return home if safe to do so; (3-30-01)

b. Adoption or legal guardianship by a relative; (3-30-01)

c. Adoption or legal guardianship by kin; (3-30-01)

d. Adoption or legal guardianship by non-relative; (3-30-01)

e. Other planned permanent placement such as long-term foster care. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

240. SIX MONTH REVIEWS CONDUCTED BY THE DEPARTMENT.
Unless a judicial review occurs at the end of a six (6) month period in a Child Protective Act placement or other out of home placement including placements under the Children's Mental Health Services Act, placements of children where the Department is the child's guardian, the Department ~~*shall*~~ will conduct an individual family case review to assure compliance with all applicable state and federal laws, and to ensure the plan focuses on the goals of safety, permanency and well-being of the child. ~~*(5-3-03)*~~(____)

01. Notice of Six Month Review. The parent(s) or legal guardian(s), foster parents of a child and any preadoptive parent(s) or relative(s) providing care for the child and an Indian child's tribe, if appropriate, are to be provided with notice of and an opportunity to be heard in the six (6) month review. This ~~*shall*~~ must not be construed to require that any foster parent, preadoptive parent, or relative providing care for the child be made a party solely to the review on the basis of such notice and opportunity to be heard. Participants have the right to be represented by the individual of their choice. ~~*(5-3-03)*~~(____)

02. Procedure in the Six Month Review. The parties ~~*shall*~~ will be given the opportunity for face-to-face discussion including attending, asking questions and making statements. ~~*(3-30-01)*~~(____)

03. Members of Six Month Review Panel. The review team ~~*shall*~~ must include a Department employee who is not in the direct line of supervision in the delivery of services to the child or parent(s) or legal guardian(s) being reviewed. The review panel may include agency staff, staff of other agencies, officers of the court, members of Indian tribes and citizens qualified by experience, professional background or training. Members of the panel ~~*shall*~~ will be chosen by the regional director and receive instructions from the Family and Children's Services Program Manager or ~~*their*~~ his designee to enable them to understand the review process and their roles as participants. ~~*(5-3-03)*~~(____)

04. ~~*Issues Considered*~~ Considerations in Six Month Review. Whether conducted by the court in a review hearing or a Department review panel, under State law, Federal law and regulation, at least each of the following must be addressed: ~~*(5-3-03)*~~(____)

a. Determine the extent of compliance with the family services plan; (5-3-03)

b. Determine the extent of progress made toward alleviating or mitigating the causes necessitating the placement; (5-3-03)

c. Review compliance with the Indian Child Welfare Act, when applicable; (5-3-03)

d. Determine the safety of the child, the continuing need for and appropriateness of the child's placement; and (5-3-03)

e. Project a likely date by which the child may be returned and safely maintained at home or placed for adoption, legal guardianship or other permanent placement. (5-3-03)

05. Recommendations and Conclusions of Six Month Review Panel. Following the review, written conclusions and recommendations ~~*shall*~~ will be provided to all participants, subject to Department safeguards for confidentiality. The decision ~~*shall*~~ must also provide appeal rights. ~~*(3-30-01)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

400. AUTHORITY FOR ALTERNATE CARE SERVICES.
Upon approval of the Regional Family and Children's Services Program Manager or his designee, the Department may provide or purchase alternative care under the following conditions: ~~*(5-3-03)*~~(____)

01. Department Custody. When the child is in the legal custody or guardianship of the Department; or (3-18-99)

02. Voluntary Placement. Upon agreement with the parent(s) or legal guardian(s)

when circumstances interfere with their provision of proper care or they are no longer able to maintain a child with serious emotional disturbance in their home and they can benefit from social work and treatment services. A service plan and an out-of-home placement agreement must be developed between the Department and the family. The service plan will identify ~~issues~~ areas of concern, goals, ~~objectives~~ desired results, time frames, tasks and task responsibilities. The out-of-home placement agreement will include the terms for reimbursement of costs with any necessary justification for deviation from Child Support guidelines. A voluntary agreement for out-of-home placement entered into between the Department and the parent(s) or legal guardian(s) of a minor child may be revoked at any time by the child's parent(s) or legal guardian(s). A contract between the Department and the service provider, if applicable, must also be in effect. Voluntary out-of-home placements exceeding one hundred eighty (180) days without a judicial determination that it is in the best interests of the child to continue his current placement, cannot be reimbursed by Title IV-E funds. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

405. ALTERNATE CARE CASE MANAGEMENT.
Case management ~~shall~~ must continue while the child is in alternate care and ~~shall~~ must ensure the following: ~~(3-18-99)~~(____)

01. Preparation for Placement. Preparing a child for placement in alternate care ~~shall be~~ is the joint responsibility of the child's family, the child (when appropriate), the family services worker and the alternate care provider. ~~(3-18-99)~~(____)

02. Information for Alternate Care Provider. The Department and the family ~~shall~~ must inform the alternate care provider of their roles and responsibilities in meeting the needs of the child including: ~~(3-30-01)~~(____)

a. Any medical, health and dental needs of the child including the names and address of the child's health and educational providers, a record of the child's immunizations, the child's current medications, the child's known medical problems and any other pertinent health information concerning the child; (3-18-99)

b. The name of the child's doctor; (3-18-99)

c. The child's current functioning and behaviors; (3-18-99)

d. The child's history and past experiences and reasons for placement into alternate care; (3-30-01)

e. The child's cultural and racial identity; (3-18-99)

f. Any educational, developmental, or special needs of the child; (3-18-99)

g. The child's interest and talents; (3-18-99)

h. The child's attachment to current caretakers; (3-18-99)

i. The individualized and unique needs of the child; (3-18-99)

j. Procedures to follow in case of emergency; and (3-18-99)

k. Any additional information, that may be required by the terms of the contract with the alternate care provider. (3-18-99)

03. Consent for Medical Care. Parent(s) or legal guardian(s) ~~*shall*~~ must sign a Departmental form of consent for medical care and keep the family services worker advised of where they can be reached in case of an emergency. Any refusal to give medical consent ~~*shall*~~ must be documented in the family case record. ~~*(5-3-03)*~~(____)

04. Financial Arrangements. The family services worker ~~*shall*~~ must assure that the alternate care provider understands the financial and payment arrangements and that necessary Department forms are completed and submitted. ~~*(3-18-99)*~~(____)

05. Contact with Child. The family, the family services worker, the alternate care provider and the child, if of appropriate developmental age, ~~*shall*~~ must establish a schedule for frequent and regular visits to the child by the family and by the family services worker or designee. ~~*(3-18-99)*~~(____)

a. Face-to-face contact in the alternate care setting with the child by the family services worker must occur at least monthly or more frequently depending on the needs of the child ~~*and/*~~or the provider, or both, and the stability of the placement. ~~*(3-30-01)*~~(____)

b. The Department ~~*shall*~~ will have strategies in place to detect abuse or neglect of children in alternate care. ~~*(3-18-99)*~~(____)

c. Regular contact with children placed in intensive treatment facilities, in or out-of-state, ~~*shall*~~ must occur at a minimum of once every ninety (90) days. ~~*(3-30-01)*~~(____)

d. Frequent and regular contact between the child and parents and other family members ~~*shall*~~ will be encouraged and facilitated unless it is specifically determined not to be in the best interest of the child. Such contact will be face-to-face if possible, with this contact augmented by telephone calls, written correspondence, pictures and the use of video and other technology as may be relevant and available. ~~*(3-18-99)*~~(____)

e. When a child is placed in foster care ~~*at a substantial distance from home or out-of-state, a face-to-face visit with the child in the child's placement by the worker is required at least once every twelve (12) months*~~ in another state, a Department family services worker must maintain at least monthly contact with the child and family with whom he has been placed as long as the state of Idaho has custody of the child. The supervising agency in the state where the child is living is required to maintain monthly, face-to-face contact with the child and the family and make quarterly reports to the Department in accordance with arrangements made through the Interstate Compact on the Placement of Children. ~~*(5-3-03)*~~(____)

06. Discharge Planning. Planning for discharge from alternate care into family services that follow alternate care ~~*shall*~~ will be developed with all concerned parties. Discharge planning ~~*shall*~~ will be initiated at the time of placement and completed prior to the child's return home or to the community. ~~*(3-18-99)*~~(____)

07. Transition Planning. Planning for discharge from alternate care into a permanent placement ~~*shall*~~ will be developed with all concerned parties. Discharge planning ~~*shall*~~ will be initiated at the time of placement and completed prior to the child's return home or to the community. ~~*(3-18-99)*~~(____)

08. Financial and Support Services. As part of the discharge planning, Departmental resources ~~*shall*~~ will be coordinated to expedite access to Department financial and medical assistance and community support services. ~~*(3-18-99)*~~(____)

406. -- 4~~*19*~~21. (RESERVED).

~~***420. OTHER SOURCES OF ALTERNATE CARE -- CASEY FAMILY PROGRAM, BOISE DIVISION.***~~
~~*Children may be referred to the Casey Family Program, Boise Division for placement when it is determined that reunification of the family is not anticipated to be possible. Once the child has been accepted into the Casey Family Program, Boise Division, the Program will provide direct case management services pursuant to a contract with the Division of Family and Community Services with final responsibility for decision-making continuing to rest with the Department. Children placed with the Casey Family Program shall continue to be eligible for all Department programs, and regional and Casey Family staff shall combine resources to the extent possible to serve these children in the most effective manner.*~~ ~~*(3-20-04)*~~

~~***421. OTHER SOURCES OF ALTERNATE CARE -- PLACEMENT OF UNWED MOTHERS AT BOOTH MEMORIAL HOME.***~~
~~*Referrals may be made to Booth Memorial Home for both outpatient and residential services for unwed pregnant women under the age of twenty-one (21), whose determined needs for outpatient or alternate care placement cannot be met by less restrictive means.*~~ ~~*(3-30-01)*~~

~~***01. Referral Criteria**. For referral to this program, the mother shall:*~~ ~~*(3-30-01)*~~

~~*a. Be unmarried;*~~ ~~*(3-18-99)*~~

~~*b. Have a high-risk pregnancy;*~~ ~~*(3-18-99)*~~

~~*c. Be under the age of eighteen (18) at the time of referral for residential services, and up to the age of twenty-one (21) for outpatient referrals, who are enrolled in the educational component of the program;*~~ ~~*(3-30-01)*~~

~~*d. Be a resident of the state of Idaho;*~~ ~~*(3-18-99)*~~

~~*e. Lack other community resources that would meet her needs in the most home-like environment; and*~~

~~(3-18-99)~~

~~f. Be willing to enroll in the educational program provided by Booth if the mother has not completed high school or a GED. (3-18-99)~~

~~02. Exclusions from Referral. Individuals not appropriate for referral to Booth include: (3-18-99)~~

~~a. Those who are a danger to self or others; (3-18-99)~~

~~b. Those who could be better served by other levels of care, such as foster care or local board and room care; or (3-18-99)~~

~~c. Those whose problems are of such levels that they need the structure of an institutional placement. (3-18-99)~~

(BREAK IN CONTINUITY OF SECTIONS)

428. CUSTODY AND PLACEMENT.
The child's placement and care are the Department's responsibility. The child must live in a licensed foster home, licensed institution, licensed group home, or in a licensed relative's home. (3-30-01)

01. Interstate Placements. In interstate placements, a child may be placed with an approved unlicensed relative when delaying the placement would be harmful to the child's well-being. In those cases, a subsequent request for foster care licensure will be made through the Interstate Compact on the Placement of Children. ( )

02. Intrastate Placements That Become Interstate Placements. If a foster care placement that was initially intrastate becomes an interstate placement because the family with whom the child is placed relocates to another state, a request for foster care licensure will be made through the Interstate Compact on the Placement of Children immediately upon the decision to move the child. If the state to which the family has moved accepts the family's Idaho foster care license as effective, the placement is considered licensed until a determination is made that the family is in compliance with the licensing and other applicable laws of the state to which the family has moved. ( )

(BREAK IN CONTINUITY OF SECTIONS)

445. DENTAL CARE.
~~Every~~ Each child age ~~two~~ three (~~2~~3) who is placed in alternate care ~~shall~~ must receive a dental examination as soon as possible after placement, but not later than ninety (90) days, and thereafter

according to a schedule prescribed by the dentist. ~~(3-18-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

451. DRIVERS' TRAINING AND LICENSES FOR CHILDREN IN ALTERNATE CARE.
No ~~d~~Department~~al~~ employee or foster parent~~(s) shall~~ is allowed to sign for any foster child's driver's license or permit without written authorization from the ~~Regional Director~~ Family and Children's Services Program Manager. Any Department employee or foster parent signing for a foster child's driver's license or permit without the ~~Regional Director's~~ approval of the Family and Children's Services Program Manager assumes full personal responsibility and liability for any driving related damages that may be assessed against the child. Those damages will not be covered by the Department's insurance. ~~(5-3-03)~~(____)

01. Payment by Department. The Department may make payments for driver's training, licenses and permits for children in the Department's guardianship when obtaining a driver's license is part of an older teen's Independent Living Plan. (3-30-01)

02. Payment by Parent(s) or Legal Guardian(s). The parent(s) or legal guardian(s) of children in foster care may authorize drivers' training, provide payment and sign for drivers' licenses and permits. (5-3-03)

452. -- 479. (RESERVED).

480. ALTERNATE CARE LICENSURE.
All private homes and facilities providing care for children ~~pursuant to~~ under these rules ~~shall~~ must be licensed in accordance with ~~Idaho Department of Health and Welfare Rules,~~ IDAPA 16.06.02, "Rules ~~and~~ Governing Standards for Child Care Licensing," unless foster care placement of an Indian child is made ~~by the court~~ with a foster home licensed, approved or specified by the Indian child's tribe, or an institution for children approved by an Indian tribe or operated by an Indian organization. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

485. PROFESSIONAL FOSTER CARE.
Placement in professional foster care for children who require professional care for clinically diagnosed emotional, behavioral, ~~and/~~or physical problems ~~shall~~ must be based upon the documented needs of each child, including the inability of less restrictive settings to meet the child's needs and a determination that the child would require a more restrictive setting if professional foster care were not available. ~~(3-18-99)~~(____)

01. Qualifications. At least one (1) parent ~~shall~~ must possess ~~a master's or higher~~

~~degree in a human service field or~~ a bachelor's degree ~~with~~ or three (3) years of experience in a human service delivery setting or be otherwise licensed or certified to provide specialized social and medical care to children, and neither parent ~~shall~~ can be a Department employee. ~~(3-18-99)~~(____)

02. Payment. Payment ~~shall~~ will be made through a professional services contract with the Department for a basic rate and cost for social services total of one thousand dollars ($1,000) per month per child. ~~(3-18-99)~~(____)

03. Treatment Plan. The professional foster parent(s) ~~shall~~ must implement a treatment plan, developed in conjunction with the child's family services worker, for each child in their care. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

554. RESPONSE PRIORITIES.
The Department ~~shall~~ must use the following statewide standards for responding to allegations of abuse, neglect, or abandonment, using the determination of risk to the child as the primary criterion. Any variance from these response standards ~~shall~~ must be documented in the family's case file with a description of action taken, ~~which shall~~ and must be reviewed and signed by the ~~Child Protective~~ Family and Children's Services Supervisor. ~~(3-18-99)~~(____)

01. Priority I. The Department ~~shall~~ must respond immediately if a child is in immediate danger involving a life-threatening or emergency situation. Emergency situations include sexual abuse when a child may have contact with the alleged perpetrator and circumstances indicate a need for immediate response. Law enforcement ~~shall~~ must be notified and requested to respond or to accompany a family services worker. Every attempt should be made to coordinate the Department's assessment with law enforcement's investigation. The child ~~shall~~ must be seen by a Department family services worker, law enforcement, and medical personnel if applicable, immediately unless written regional protocol agreements direct otherwise. All allegations of physical abuse of a child through the age of six (6) or with profound developmental disabilities should be considered under Priority I unless there is reason to believe that the child is not in immediate danger. ~~(3-30-01)~~(____)

02. Priority II. A child is not in immediate danger but allegations of abuse, including physical or sexual abuse, or serious physical or medical neglect are clearly defined in the referral. Law enforcement ~~shall~~ must be notified within twenty-four (24) hours. The child ~~shall~~ must be seen by the family services worker within forty-eight hours (48) of the Department's receipt of the referral. Law enforcement must be notified within twenty-four (24) hours of receipt of all Priority II referrals which involve ~~issues~~ concerns of abuse or neglect. ~~(3-18-99)~~(____)

03. Priority III. A child may be in a vulnerable situation because of services needs which, if left unmet, may result in harm, or a child is without parental care for safety, health and well being. The child and parent(s) or legal guardian(s) will be interviewed for substantiation of the facts, and to assure that there is no abuse or neglect by parent(s) or legal guardian(s). A family

services worker ~~shall~~ must respond within three (3) calendar days and the child must be seen by the worker within five (5) calendar days of the Department's receipt of the referral.
~~(3-20-04)~~(____)

04. Notification ~~to Referent~~ of the Person Who Made the Referral. The Department ~~of Health and Welfare, Family and Children's Services, shall~~ must notify the ~~reporting individual~~ person who made the child protection referral of the receipt of the referral within five (5) days.
~~(3-18-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

558. COMMUNITY RESOURCES.
The Department ~~shall~~ will provide information and referral to community resources or may offer preventative services to the family. Information and referral services enable individuals to gain access to human services through providing accurate, current information on community and Department resources. ~~(3-18-99)~~(____)

559. CHILD PROTECTION ~~RISK~~ IMMEDIATE SAFETY AND COMPREHENSIVE ASSESSMENTS.
The Department's ~~risk~~ immediate safety and comprehensive assessments ~~shall~~ must be conducted in a standardized format and ~~shall~~ must utilize statewide ~~risk~~ assessment and multi-disciplinary team protocols. The assessment ~~shall~~ must include contact with the child or children involved and the immediate family and a records check for history with respect to child protection issues.
~~(3-30-01)~~(____)

01. Interview of a Child. The interview of a child concerning a child protection report ~~shall~~ must be conducted: ~~(3-18-99)~~(____)

a. In a manner that protects all children involved from undergoing any unnecessary traumatic experience, including ~~but not limited to~~ multiple interviews; ~~(3-18-99)~~(____)

b. By a professional with specialized training in using techniques that consider the natural communication modes and developmental stages of children; and (3-18-99)

c. In a neutral, non-threatening environment, such as a specially equipped interview room, if available. (3-18-99)

02. Interview of Family. Interview of the child's immediate family is mandatory in every case and may require the participation of law enforcement. The family services worker conducting the interview ~~shall~~ must: ~~(3-18-99)~~(____)

a. Immediately notify the parent(s) or legal guardian(s) being interviewed of the purpose and nature of the assessment. At the initial contact with family, the name and work phone numbers of the ~~case~~ family services worker and his~~/her~~ supervisor ~~shall~~ must be given to ensure the family has a contact for questions and concerns that may arise following the visit;

~~(5-3-03)~~(____)

b. Determine if the family is of Indian heritage for the purposes of ICWA; (3-18-99)

c. Interview siblings who are identified as being at risk; and (3-18-99)

d. Not divulge the name of the person making the report ~~during the course of the assessment~~ of child abuse or neglect. ~~(3-18-99)~~(____)

03. Collateral Interviews. Any assessment of an abuse or neglect report ~~shall~~ must include at least one (1) collateral interview with a person who is familiar with the circumstances of the child or children involved. Collateral interviews ~~shall~~ will be conducted with discretion and preferably with the parent(s)' or legal guardian(s)' permission. ~~(5-3-03)~~(____)

04. Completion of a Comprehensive ~~Risk~~ Assessment. An Immediate Protection/ Safety Plan will be completed on each referral assigned for assessment of abuse ~~and/~~or neglect, or both. When there are findings of moderate or higher risk and a case remains open, a comprehensive ~~risk~~ assessment must be completed within thirty (30) days of initial contact with the child of concern. ~~(3-30-01)~~(____)

05. Role of Law Enforcement. Section 16-1625, Idaho Code, specifies that the Department may enlist the cooperation of peace officers for phases of the ~~risk~~ safety assessment for which they have the expertise and responsibility and consistent with the relevant multidisciplinary team protocol. Such areas include~~, but are not limited to~~: ~~(3-18-99)~~(____)

a. Interviewing the alleged perpetrator; (3-18-99)

b. Removing the alleged perpetrator from the child's home in accordance with Section 39-6301, Idaho Code, the "Domestic Violence Act"; and (3-18-99)

c. Taking a child into custody in accordance with Section 16-1612, Idaho Code, where a child is endangered and prompt removal from his or her surroundings is necessary to prevent serious physical or mental injury. (3-18-99)

06. Notification of ~~Referent~~ the Person Who Made the Referral. The ~~referent shall be~~ Department must ~~notified~~ notify the person who made the child protection referral when the risk assessment has been completed. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

565. PETITION UNDER THE CHILD PROTECTIVE ACT.
If any incidence of child abuse, neglect, or abandonment is substantiated through ~~the risk~~ an immediate safety or comprehensive assessment, or both, or during the provision of services, and cannot be resolved through informal processes or voluntary agreement that is adequate for protection of the child, the Department ~~shall~~ must request the prosecuting attorney to file a Child

Protective Act petition. ~~(3-30-01)~~(____)

566. COOPERATION WITH LAW ENFORCEMENT.
The Department ~~shall~~ must cooperate with law enforcement personnel in their handling of criminal investigations and the filing of criminal proceedings. ~~(3-18-99)~~(____)

567. CHILD CUSTODY INVESTIGATIONS FOR THE DISTRICT COURT.
Where no other community resources are available and when ordered by the district courts, the Department ~~shall~~ will, for a fee of thirty-five dollars ($35) per hour, conduct ~~risk~~ immediate safety and comprehensive assessments and provide social information to assist the court in child custody actions, to assist the court to determine the most therapeutic placement for the child. ~~(3-30-01)~~(____)

01. Requests From Private Attorney. If a parent's attorney requests ~~a risk~~ an immediate safety or comprehensive assessment, or both, and a report of findings regarding the fitness of a parent, the attorney ~~shall~~ must be advised that such service is provided on behalf of a child but not on behalf of a litigant, and that any such assessment and report would be provided to the court pursuant to a court order. ~~(3-18-99)~~(____)

02. Conduct of the Assessment. In conducting the assessment, the family services worker ~~shall~~ must explain to the family the purpose for which the information is being obtained. If the judge intends to treat the report as evidence, the family ~~shall~~ must be informed that any information they provide will be brought out at the court hearing. If the family refuses to give information to the family services worker, the Department has no authority to require cooperation. However, the judge may issue an order directing the family to provide information to the family services worker for the purpose of making a report to the court. ~~(3-18-99)~~(____)

03. Report to Court. The family services worker ~~shall~~ will provide a report only to the Magistrate judge who ordered the assessment, and ~~shall~~ must use the Department's format for the assessment of need. The report ~~shall~~ must describe what was observed about the home conditions and the care of the child(ren). ~~(3-18-99)~~(____)

04. Department Clients. If the family is or has been a client of the Department, disclosure of information ~~shall~~ must comply with Idaho Department of Health and Welfare Rules, IDAPA 16.05.01, "Use and Protection of Department Records." ~~(3-18-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

642. ACCESS TO SERVICES.
The Department will prioritize services to seriously emotionally disturbed children and their families. Services may be accessed through a voluntary application for services or through involuntary legal proceedings. When regional service capacity is reached, every reasonable effort will be made to obtain alternative services for the child and family. Their names will also be placed on a waiting list for Department services. (3-30-01)

01. Local Resources and Plan Development. Children with serious emotional disturbances and their families may have access to local resources and services which do not require placement outside their home into alternate care. A plan will be developed between the Department, the parent(s) or legal guardian(s), the child, if appropriate, and the service provider. This plan will be specific, measurable and ~~*objective*~~ realistic in the identification of the goal(s), relevant ~~*issues*~~ areas of concern, ~~*objectives and outcomes*~~ and desired results. ~~*(5-3-03)*~~(____)

02. Payment for Treatment. When parent(s) or legal guardian(s) request Department payment for a child's treatment, a service agreement must be negotiated and signed by the parent(s) or legal guardian(s) and the Department. A referral will be made to Child Support Services to collect payment for the cost of out-of-home care. (5-3-03)

03. Involuntary Placement Under the Children's Mental Health Services Act. When a seriously emotionally disturbed child presents a significant danger to himself or herself and/or to others and the child's parent(s) or legal guardian(s) will not consent to a voluntary placement of the child, the child can be placed involuntarily through a court order. Involuntary Treatment Orders are limited to one hundred twenty (120) days and can be changed to a voluntary placement upon the request of the consenting parent(s) or legal guardian(s). At the end of one hundred twenty (120) days, a judicial redetermination is required to extend the involuntary treatment order for an additional set period of time. (5-3-03)

04. Use of Public Funds and Benefits. Public funds and benefits will be used to provide services for children with serious emotional disturbances and their families. Services should be planned and implemented to maximize the support of the family's ability to provide adequate safety and well-being for the child at home. If the child cannot receive adequate services within the family home, community resources ~~*shall*~~ will be provided to minimize the need for institutional or other residential placement. Services ~~*shall*~~ will be individually planned with the family to meet the unique needs of each child and family. Services ~~*shall*~~ will be provided without requiring that parent(s) or legal guardian(s) relinquish custody of the child. ~~*(3-20-04)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

701. SERVICES TO BE PROVIDED IN ADOPTIONS.
In addition to the core family and children's services provided in accordance with these rules, the Department ~~*shall*~~ must assure provision of the following: ~~*(3-30-01)*~~(____)

01. Response to Inquiries. Written or personal inquiries from prospective adoptive families ~~*shall*~~ must be answered within two (2) weeks. ~~*(3-18-99)*~~(____)

02. Pre-Placement Child/Family Assessment. An assessment of the child's family of origin history, needs as an individual and as part of a family, and completion of a life story book for each child preparing for adoptive placement. (3-18-99)

03. Compliance with Multi-Ethnic Placement Act and Interethnic Adoption Provisions. Selection of the most appropriate adoptive family consistent with the Multi-Ethnic

Placement Act and Interethnic Adoption Provisions, if the child is not an Indian. (3-30-01)

04. (Pre-Placement) Home Study. An adoptive home study to ensure selection of an appropriate adoptive home. (3-18-99)

05. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parents and assisting the child with the transition into an adoptive home. (5-3-03)

06. Technical Assistance. Assistance in completing the legal adoption, including compliance with the Indian Child Welfare Act. (3-18-99)

07. Adoption Assistance. A determination of eligibility for adoption assistance ~~*shall*~~ must be made for each child placed for adoption through the Department prior to the finalization of his adoption. Eligibility for adoption assistance is determined solely on the child's need. No means test ~~*shall*~~ may be applied to the adoptive family's income or resources. Once eligibility is established, the Division ~~*shall*~~ will negotiate a written agreement with the adoptive family. The agreement must be fully executed by all parties prior to the finalization of the adoption in order to be valid. ~~*(3-18-99)*~~(____)

08. Period of Support Supervision. Once a child is placed with an adoptive family, a period of support and supervision by the Department ~~*of*~~ lasting at least six (6) months ~~*shall occur*~~ must be completed prior to the finalization of the adoption. If the child has been a foster child placed with the family for a period of at least ~~*one*~~ six (~~*1*~~6) ~~*year*~~ months, the family may submit a written request to the Department's Family and Children's Services Program Manager to ~~*waive the standard support*~~ reduce the supervisory period to a minimum of three (3) months. ~~*(3-30-01)*~~(____)

09. Post Adoption Services. Services after an adoption is final are provided within available resources. Children with negotiated adoption assistance agreements, ~~*(*~~whether from Idaho or from another state~~*)*~~, are eligible for any services available to Idaho children. International adoptees residing in Idaho are also eligible for any services available to Idaho children ~~*pursuant to*~~ under the Inter-Country Adoption of 2000 (P.L.106-279). Children with ~~*adoption assistance*~~ either IV-E or state adoption assistance agreements are eligible for Medicaid in Idaho. A referral from an Interstate Compact on Adoption and Medical Assistance member state ~~*shall*~~ will serve as a formal application for services in Idaho. Applications for Medicaid are made through ~~*Central Office*~~ the Department in accordance with IDAPA 16.03.01, "Eligibility for Health Care Assistance for Families and Children." ~~*(5-3-03)*~~(____)

702. SERVICES TO BE PROVIDED IN LEGAL GUARDIANSHIPS.
In addition to the family services provided in accordance with these rules, the Department ~~*shall*~~ will provide the following: ~~*(5-3-03)*~~(____)

01. Preparation for Placement. Preparation of the child by an assigned social worker who will assist the child in addressing anticipated grief and loss due to separation from his parent(s) and assisting the child with the transition into the home of the legal guardian(s). (5-3-03)

02. Licensure. Potential legal guardian(s) must apply for and receive a foster care license before any child in the guardianship of the Department can be placed in their home. (5-3-03)

03. Financial Assistance to Obtain Guardianship. For potential legal guardian(s) who are not able to afford the attorney and court costs to obtain legal guardianship of a child in the Department's guardianship, financial assistance may be available from the Department. Financial assistance may be provided regardless of the guardian's state of residence. (5-3-03)

04. Eligibility for Guardianship Assistance. A determination of eligibility for guardianship assistance ~~*shall*~~ must be made for each child placed in a legal guardianship through the Department prior to the finalization of the guardianship. Eligibility for guardianship assistance is ~~*determined solely on the basis of*~~ based on the child's identified needs, and requires completion of the legal termination of parental rights and documentation of unsuccessful efforts to place the child for adoption. No means test ~~*shall*~~ may be applied to the prospective legal guardian family's income or resources in a determination of eligibility. ~~*(5-3-03)*~~(____)

05. Guardianship Assistance Agreement. The region ~~*shall*~~ will negotiate a written guardianship assistance agreement with the prospective legal guardian(s). The agreement must be fully executed by all parties prior to the finalization of the guardianship in order to be valid. Benefits may include both a monthly cash payment and Medicaid benefits. The cash payment may not exceed the published foster care rate the child would receive if he or she were living in family foster care in Idaho. Idaho Medicaid benefits can only be used in Idaho. There is no reciprocity with other state's Medicaid programs. Guardianship benefits are subject to availability and are to be reviewed by the Department and the legal guardian(s) at least annually. This benefit terminates on the child's eighteenth birthday regardless of the child's academic standing, physical, or developmental delays. ~~*(5-3-03)*~~(____)

06. Revocation of Legal Guardianship. Any party including the Department or the child, if age fourteen (14) or older, may petition the court to have the legal guardian(s) removed. Guardianship assistance is terminated when a court revokes the guardianship. (5-3-03)

07. Termination of Guardianship Assistance When Child Leaves Home of the Legal Guardian(s). If guardianship is revoked and the child(ren) are returned to the Department's guardianship, guardianship assistance will be terminated. If it is anticipated that another legal guardian(s) will be appointed by the court, the new guardian(s) will need to complete application for guardianship assistance before the guardianship is finalized. The guardian(s) is required to immediately report to the Department any reason which would make them ineligible to receive guardianship assistance, such as, the child leaves the home, the child marries or enters the military. (5-3-03)

08. Retroactive Benefits. Legal guardians appointed on or before July 1, 2001, are not eligible for guardianship assistance. There will be no retroactive benefits paid by the Department for a child whose legal guardian(s) was appointed before July 1, 2001 or for guardians who did not negotiate a guardianship assistance agreement prior to the finalization of the guardianship. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

770. ADOPTIVE HOME STUDIES.
Pre-placement home studies for Department adoptions, independent, relative and step-parent adoptions ~~*shall*~~ must document the following: ~~*(3-20-04)*~~( )

01. Residence. References who can verify that the family has resided and maintained a dwelling within the State of Idaho for at least six (6) consecutive months prior to the filing of the petition. (3-18-99)

02. Verification of Ages of Adopting Parent(s). Legal verification that the person(s) adopting is at least fifteen (15) years older than the child or twenty-five (25) years of age or older, except in cases where the adopting person is a spouse of the child's parent, ~~*shall*~~ must be accomplished by: ~~*(3-20-04)*~~( )

a. Viewing a certified copy of the birth certificate filed with the Bureau of Vital Statistics; or (3-18-99)

b. Viewing one (1) of the following documents for which a birth certificate was presumably required prior to its issuance, such as armed services or other governmental identification, including a valid Idaho driver's license, passport, visa, alien identification cards or naturalization papers. (3-30-01)

c. If verifying documentation is not available, the report ~~*shall*~~ must indicate the date and place of birth and reason for lack of verification. ~~*(3-18-99)*~~( )

03. Medical ~~*Examination*~~ Statement. A medical ~~*examination, with the medical report form signed and dated by the examining physician*~~ statement for each applicant, signed by a qualified medical professional, within the twelve (12) month period prior to application to be an adoptive parent, indicating the applicant is in such physical and mental health so as to not adversely affect either the health or quality of care of the adopted child. ~~*(3-18-99)*~~( )

04. Photograph. A photograph of the adopting family. (3-18-99)

(BREAK IN CONTINUITY OF SECTIONS)

830. ~~*FEES FOR*~~ ADOPTION~~*S THROUGH THE DEPARTMENT*~~ APPLICATION FEE.
The adoption application fee covers the costs of processing the adoption application and does not guarantee that the applicant family will receive a child for adoption. The application fee is non-refundable. Money collected through the Department's adoption program may be utilized to pay state adoption assistance payments for children with special needs~~*, purchase of*~~ and pay the service fees, recruitment costs, and placement fees for private agencies serving children who have special needs. ~~*Families who are not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the Regional Family and*~~

~~*Children's Services Program Manager for waiver of the fees.*~~ ~~*(3-20-04)*~~(____)

831. HOME STUDY, SUPERVISORY REPORTS, AND REPORTS OF THE COURT FEES.
A family who cares for a child or children with special needs through the Department foster care program, who is not able to pay the costs associated with the pre-placement home study, supervisory reports, or the report to the court, may apply to the regional Family and Children's Services Program Manager for a waiver of some or all of the fees. If a family who receives a waiver of the pre-placement home study fee uses that home study to pursue adoption of a child not in the Department's custody, the Department will rescind the waiver and the family will be expected to pay the Department for the full cost of the study. (____)

832. FEE SCHEDULE - ADOPTIONS THROUGH DEPARTMENT.

TABLE 83~~4~~2	
Service	**Fee**
General Information/Adoption Inquiries	No Charge
Health and Welfare Application: Couple Single Parent	 $50 $25
Second Placement or Reapplication	$25
~~*Criminal History Check for each adult in the home*~~	~~*$34*~~
Pre-placement Home Study - Payment due at time of study or per agreement	$450
Report to Court under the Adoption Act	$150
Second Placement	$150
Placement Supervision Fee - Charged at the time of placement	$300
Closed Adoption Home Study/Court Report Retrieval Fee	$50
Report to the Court Under the Termination Act	$40 per hour

~~*(3-18-99)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

860. PROCEDURES FOLLOWING THE ADOPTIVE PLACEMENT.
Following the adoptive placement, ~~*there shall be*~~ a ~~*supervisory*~~ period of support and supervision by the Department lasting at least six (6) months ~~*before*~~ must be completed prior to the ~~*initiation*~~ finalization of ~~*legal*~~ the adoption ~~*proceedings*~~. In situations where a foster family has a significant relationship with a child and the child has been placed in their home for at least the last ~~*twelve*~~ six (~~*12*~~6) months, the supervisory period may be reduced to a minimum of three (3) months.The family services worker ~~*shall*~~ will make scheduled visits to the home at least monthly during this period to assist the child and the family in their adjustment to each other and will update the

child's permanent record by means of monthly progress reports. When completion of the adoption is recommended by the field office and approved by the ~~State Adoption~~ Permanency Program Specialist, the Department ~~shall~~ will request the prospective adoptive parent(s) contact their attorney. The regional family services worker ~~shall~~ will provide the attorney with the necessary documentation to file the petition for adoption. ~~(3-20-04)~~(____)

861. PROGRESS REPORTS.
Progress reports ~~shall~~ will be prepared regularly and ~~shall~~ will be based on the family services worker's findings. ~~(3-18-99)~~((____)

01. Initial and Subsequent Reports. The first progress report must be made within two (2) weeks after placement, and subsequent progress reports must be made at intervals not to exceed thirty (30) days. These reports ~~shall~~ will include: ~~(5-3-03)~~(____)

a. The family services worker's observation of the child and the prospective adopting parent(s), with emphasis on: (5-3-03)

b. Special needs/circumstances of child(ren) at time of placement; (3-18-99)

c. Services provided to child(ren) and family during report period; (3-18-99)

d. Services to be provided to child(ren) and family; (3-18-99)

e. General appearance and adjustment of child(ren) during report period (may include eating, sleep patterns, responsiveness, bonding); (3-18-99)

f. School/day care/day treatment program adjustment; (3-18-99)

g. Health/developmental progress, medical practitioner information; (3-18-99)

h. Whether the child(ren) have been accepted for coverage on family's medical insurance, when coverage begins, and whether there will be any limitations/exclusions; (3-30-01)

i. Family's adjustment to adoptive placement; (3-18-99)

j. Whether respite care is a need for the family; (3-18-99)

k. Changes in family situation or circumstances; (3-18-99)

l. Areas of concern during report period as addressed by both child(ren) and adoptive parent(s); and (5-3-03)

m. Date of next required six (6) month review or twelve (12) month permanency hearing; (3-18-99)

02. Monthly Foster Care Payments -- Pre-Adoptive Placement. To receive Title IV-E monthly foster care payments during the period pending completion of adoption, the prospective adoptive parent(s) must have a foster care license. (3-20-04)

~~***03. Adoptive and Foster Home Studies**. A foster home evaluation completed by the Department of Health and Welfare or a licensed children's adoption agency forms the foundation of the pre-placement adoptive homestudy.* *(3-30-01)*~~

0~~4~~3. Final Progress Report. The final report ~~*shall*~~ must include pertinent information about the readiness of the child and the family for completion of the adoption. The family's decision to apply for adoption assistance benefits for the child should be documented. The family's attorney who will be handling the finalization of the adoption should be identified. The family's health insurance carrier should be identified, along with the date the child's medical coverage will begin. An up-to-date medical report on the child must be obtained from the child's physician, so that the Department will have current information about the health of the child. Any problem in placement ~~*shall*~~ must be brought to the attention of the Department. ~~*(3-30-01)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

900. ADOPTION ASSISTANCE.
The purpose of the adoption assistance program is to encourage the legal adoption of children with special needs who would not be able to have the security of a permanent home without support payments. Applications are made through the Division of Family and Community Services, Resource Development Unit for a determination of eligibility. Once an application for adoption assistance is submitted to the Division of Family and Community Service's, the Division ~~*shall*~~ will respond with a determination of the child's eligibility within forty-five (45) days. ~~*(3-18-99)*~~(____)

01. Determination of Eligibility for Title IV-E Adoption Assistance. The Bureau of Family and Children's Services ~~*shall*~~ will determine whether a child is a child with special needs. Children applying for adoption assistance benefits must meet Idaho's definition of a child with special needs according to Section 473 (c) of P.L. 96-272 (The Adoption Assistance and Child Welfare Act of 1980). There are five (5) ways a child can be eligible for Title IV-E adoption assistance: ~~*(5-3-03)*~~(____)

a. Child is Aid to Families with Dependent Children (AFDC) eligible, is in the custody or care of the public child welfare agency or an Indian tribe with whom the state has a IV-E agreement and meets the definition of a child with special needs. For children whose adoption assistance eligibility is based on the child's AFDC eligibility, the child must meet the AFDC criteria both at the time of removal from his home and in the month the adoption petition is filed. (5-3-03)

i. If the child is removed from his home pursuant to the first judicial determination, such determination must indicate that it was contrary to the welfare of the child to remain in the home. (5-3-03)

ii. If the child is removed from the home pursuant to a voluntary out-of-home placement agreement, the child must receive at least one (1) Title IV-E foster care payment to be

eligible for Title IV-E adoption assistance. (5-3-03)

b. Child is eligible for Supplemental Security Income (SSI) benefits and meets the definition of a child with special needs. (5-3-03)

i. A child is eligible for adoption assistance if, at the time the adoption petition is filed, the child has met the requirements for Title XVI (SSI) benefits; (5-3-03)

ii. The circumstances of a child's removal from his home or whether the public child welfare agency has responsibility for the child's placement and care is not relevant. (5-3-03)

c. Child has been voluntarily relinquished to a private non-profit adoption agency and meets the definition of a child with special needs. (5-3-03)

i. The child must meet the requirements, or would have met the requirements, of the AFDC program as such sections were in effect on July 16, 1996, in or for the month in which the relinquishment occurred, or court proceedings were held which lead to the removal of the child from his home; (5-3-03)

ii. At the time of the voluntary placement or relinquishment, the court must make a judicial determination that it would be contrary to the welfare of the child for the child to remain in the home. (5-3-03)

d. Child is eligible for Title IV-E adoption assistance as a child of a minor parent and at the time of the adoption petition the child meets the definition of a child with special needs. (5-3-03)

i. The child's parent is in foster care and receiving Title IV-E foster care maintenance payments that cover both the minor parent and child at the time the adoption petition is filed; and (5-3-03)

ii. The child continues to reside in the foster home with his minor parent until the adoption petition has been filed. If the child and minor parent have been separated in foster care prior to the time of the adoption petition, the child's eligibility for Title IV-E adoption assistance must be determined based on the child's current and individual circumstances. (5-3-03)

e. Child is eligible due to prior Title IV-E adoption assistance eligibility and meets the definition of a child with special needs. (5-3-03)

i. A child whose adoption later dissolves or the adoptive parent(s) die, may continue to be eligible for Title IV-E adoption assistance in a subsequent adoption. (5-3-03)

ii. The subsequent adoption of a child may be arranged through an independent adoption, private agency, or state agency. (5-3-03)

iii. No needs or eligibility redetermination is to be made upon a subsequent adoption. The child's need and eligibility remain unchanged from what they were prior to the initial adoption. (5-3-03)

iv. It is the responsibility of the placing state to determine whether the child meets the definition of special needs and to pay the subsidy in a subsequent adoption. (5-3-03)

02. ~~***Factors Considered***~~ **Special Needs Criteria**. The definition of special needs includes the following factors: ~~(3-18-99)~~(____)

a. The child cannot or should not be returned to the home of the parents; and (3-18-99)

b. The child has a physical, mental, emotional or medical disability, or is at risk of developing such disability based on known information regarding the birth family and child's history, or (3-18-99)

c. The child's age makes it difficult to find an adoptive home; or (3-18-99)

d. The child is a member of a sibling group that must not be placed apart; and (5-3-03)

e. State must make a reasonable but unsuccessful effort to place the child with special needs without a subsidy, except in cases where it is not in the best interests of the child due to his significant emotional ties with the foster parent(s) or relative(s) who are willing to adopt the child. (5-3-03)

03. Determination of Eligibility for State Funded Adoption Assistance. Children in state custody who meet the special needs criteria found in Subsection 900.02 of these rules and do not meet any of the criteria for Title IV-E adoption assistance found at Subsection 900.01 in these rules, may be eligible for state-funded adoption assistance benefits. If the child is determined ineligible for Title IV-E adoption assistance, the application will be evaluated for a state-funded subsidy. ~~(5-3-03)~~(____)

04. Interjurisdictional Adoptions. When a child's adoption is arranged through the care and placement of a private non-profit adoption agency in another state and the adoptive family are residents of Idaho, the state of Idaho ~~*shall be*~~ is responsible for the eligibility determination, negotiation, and payment of any subsequent Title IV-E ~~*or state-funded*~~ adoption assistance benefits. ~~(5-3-03)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

910. TYPES AND AMOUNTS OF ASSISTANCE.
The needs of the child and the family, including any other children in the family, ~~*shall*~~ will be considered in determining the amount and type of support to be provided. Assistance may include the following: ~~(3-18-99)~~(____)

01. Nonrecurring Adoption Reimbursement. Payment for certain one (1) time

expenses necessary to finalize the adoption may be paid when a family adopts a special needs child. The child's eligibility must be determined and the contract for reimbursement must be fully executed prior to the finalization of the adoption. The reimbursement is paid only after the adoption finalizes. The expenses are defined as reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption finalization of a child with special needs and which are not incurred in violation of state or federal law. They may include mileage and lodging involved in visiting the child before placement occurs. These expenses cannot be reimbursed if they are paid for the adoptive parents by other sources such as an employer. Documentation of expenses must be submitted. Costs are reimbursable up to two thousand dollars ($2,000) per child and are entered on the Adoption Assistance Program Agreement. Families applying for Nonrecurring Adoption Reimbursement separate from the regular Adoption Assistance program must submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the finalization of the child's adoption. Families applying for Nonrecurring Adoption Expenses Reimbursement on behalf of a child who is adopted through an international adoption must submit an application for Nonrecurring Adoption Expenses Reimbursement, obtain a determination of eligibility, and negotiate a Nonrecurring Adoption Expenses Reimbursement Agreement prior to the family's departure to the foreign country and the child's adoption in the foreign country. Children for whom the adoption has been finalized without a negotiated Nonrecurring Expenses Reimbursement Agreement are not eligible to apply for these benefits. (5-3-03)

02. Monthly Cash Payment. Financial assistance in the form of a monthly cash payment may be established to assist the adoptive family in meeting the additional expenses of the child's special needs. The amount of the payment must be negotiated with the family by the adoption worker and based on the family's circumstances and what additional resources are needed to incorporate the child into the adoptive family. The amount ~~*shall*~~ must not exceed the rate for family foster care which would be made if the child were in a family foster home in Idaho. For children who meet the definition of special needs at Subsection 900.02 of these rules, no monthly cash payment is allowable until such time as the specific disability for which the child is known to be at risk becomes evident. For children who are currently eligible for Personal Care Services (PCS), the professional foster care rate may be used in negotiating the adoption assistance upon prior approval of the Department's Family and Community Services (FACS) Division Administrator. Benefits ~~*shall*~~ will continue until the child reaches eighteen (18) years, based upon an annual determination of continuing need. ~~*(5-3-03)*~~(____)

03. Title XIX -- Medicaid Coverage. Any ~~*special needs*~~ child ~~*for whom there is in effect*~~ with special needs who has an adoption assistance agreement ~~*shall*~~ in effect is also ~~*be*~~ eligible for medical coverage~~ *under Medicaid*~~. A Title IV-E adoption assistance agreement provides Medicaid coverage in the state of Idaho and in all other states. Under a state-funded adoption assistance agreement, a child living in Idaho is eligible for Medicaid. If the family moves to another state, Medicaid may or may not be available. If Medicaid is not available in the new state, provisions for medical coverage must be contained in the adoption assistance agreement or in an amendment to the agreement. Families enrolled in a group health plan who plan to request to use Medicaid as the child's primary health care coverage ~~*shall*~~ must apply to the Idaho Health Insurance Premium Payment (HIPP) program at the time of benefit negotiation. Medicaid provides secondary coverage after the family's health insurance ~~*and other resources have been exhausted*~~ has reached its benefit limit. ~~*Coverage may begin while the family meets the*~~

~~*child's yearly deductible under the family's health care policy. Coverage may include routine medical costs or may be limited to costs related to specific medical problems of the child. For children who meet the definition of special needs at Subsection 900.02 of these rules and whose family has health insurance, Medicaid shall not be available for treatment of that specific disability until such time as the specific disability for which the child is known to be at risk becomes evident and treatment is medically necessary.*~~ All services reimbursed by Medicaid must be determined to be medically necessary. Prior authorization may be required for some Medicaid reimbursable services. Medicaid benefits are available until the child reaches the age of eighteen (18), based upon an annual determination of continuing need. ~~*(5-3-03)*~~(____)

04. Title XX -- Social Services. Any child with special needs who has an Adoption Assistance Agreement ~~*shall*~~ is also be eligible for state-authorized Title XX - Federal Social Services Block Grant funded services. ~~*(5-3-03)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

923. DISRUPTION OF INTERNATIONAL ADOPTIONS.
The Intercountry Adoption Act of 2000 (P.L. 106-279) requires that each state make an annual report of children who were adopted from other countries who enter state ~~*custody*~~ guardianship as a result of ~~*the disruption of a placement for adoption or*~~ termination of the parental rights of the adoptive parent and the dissolution of ~~*an*~~ the adoption. The report will include the name of the agency who handled the placement or the adoption, the plans for the child, and the reasons for the disruption or dissolution. Each region will collect this information and send it to the ~~*Bureau of Family and Children's Service Adoptions*~~ Department's Permanency Program Specialist in January of each year. ~~*(5-3-03)*~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.02 - RULES GOVERNING CHILD CARE LICENSING

DOCKET NO. 16-0602-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The changes to the proposed text are being made to clarify that a licensed foster home with pools, hot tubs, ponds, and other bodies of water must provide appropriate adult supervision consistent with the child's age, physical ability, and developmental level.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 288 through 297.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Kathy Morris at (208) 334-5706.

DATED this 17th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The Child Care Licensing rules are being amended to better protect young children living in licensed foster homes and children's residential care facilities. When the home or facility has a swimming pool, hot tub, pond, or other bodies of water on the property, there must be additional safety devices and barriers in place to keep the children safe.

Children placed in foster homes or residential care facilities currently must have a background check upon turning eighteen (18). These young adults will no longer be required to be fingerprinted and have criminal history and background checks when they stay in the same home or facility after turning eighteen (18). The Department will still be able to require these checks at any time, but they will not be automatically required. Also, the foster parents' child who turns eighteen (18) will not be required to have a criminal history check unless he moves away from the home and returns.

The rules on adoption are being updated to address the Multiethnic Placement Act, that prohibits the delay or denying placement of any child on the basis of race, color, or national origin. Other changes were made for plain language consistency with current Department practice.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

There will be minimal savings to the Department by no longer requiring the Department's criminal history and background checks for young adults in foster home care or children's residential care facilities who turn eighteen (18).

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because these changes are necessary to protect children living in licensed foster care or children's residential care facilities.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Kathy Morris at (208) 334-5706.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before Wednesday, October 25,

2006.

DATED this 23rd day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
Pursuant to Sections 39-1111, 39-1209, 39-1210, 39-1211, 39-1213, 56-1003, 56-1004A, and 56-1005(8), Idaho Code, the Idaho Legislature has granted authority to the Department and Board of Health and Welfare to adopt and enforce rules governing standards for licensure or certification of foster homes, children's agencies and children's residential care facilities. ~~*(4-11-06)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE.

01. Idaho Statutes. The following are the Idaho Statutes incorporated by reference in this chapter of rules; (3-30-01)

a. Accreditation of Secondary Schools - Standards for elementary schools, Section 33-119, Idaho Code. (3-30-01)

b. Adoption Statutes. Sections 16-1501 through 16-1512, Idaho Code. (3-30-01)

c. Child Labor Laws. Sections 44-1301 through 44-1308, Idaho Code. (3-30-01)

d. Termination of Parental Rights. Sections 16-2001 through 16-2015, Idaho Code. (3-30-01)

e. Residential Schools. Section 39-1207, Idaho Code. (3-30-01)

02. Uniform Fire Code. The Uniform Fire Code as outlined by Section 41-253, Idaho

Code. The addition for the year prior to the issuance of the license ~~shall~~ will be used. Published by Western Fire Chiefs Association and International Conference of Building Officials. A copy is available at any Idaho State Library. ~~(3-30-01)~~(____)

03. Uniform Building Code. The Uniform Building Codes as outlined in Section 39-4109, Idaho Code. The addition for the year prior to the issuance of the license ~~shall~~ will be used. Published by International Conference of Building Officials. A copy is available at any public library in Idaho. ~~(3-30-01)~~(____)

04. Federal Laws and Regulations. ~~(3-30-01)~~(____)

a. Immigration and Naturalization Service, Title 8 CFR 204.3.c INA 101.b F1994. (3-30-01)

b. Indian Child Welfare Act, PL 95-608, 25 USC, 1901 - 1963. (3-30-01)

c. Multiethnic Placement Act (MEPA), P.L. 103-382 and P.L. 104-188 (____)

05. Occupational Safety Health Act (OSHA). A copy of OSHA may be obtained at the Idaho Industrial Commission, 317 Main Street., P.O. Box 83720, Boise, Idaho, 83720-0041. (3-30-01)

06. Crib Safety. Consumer Product Safety Commission, Crib Safety Tips can be found on the Internet at, http://www.cpsc.gov/cpscpub/pubs/cribs.html. (3-30-01)

07. National Research Council. National Research Council, Internet address, www.nas.edu.nrc. National Academy of Sciences, 2101 Constitution Ave., N.W., Washington, DC 20418. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

008. ~~—009.~~ (RESERVED).

009. CRIMINAL HISTORY AND BACKGROUND CHECK REQUIREMENTS.

01. Compliance with Department Criminal History and Background Check. Criminal history and background checks are required for providers who are licensed or certified under these rules. Providers who are required to have a criminal history check must comply with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," with the exception of those individuals described in Subsection 009.04 of these rules. (____)

02. When Certification or License is Granted. The applicant must have a completed criminal history and background check, including clearance, prior to certification or licensure. Any other adult living in the home must complete a self-declaration form, must be fingerprinted, and must not have any designated crimes listed in IDAPA 16.05.06, "Rules Governing Mandatory

Criminal History Checks." ( )

03. Applicants and Providers Subject to Criminal History Check Requirements. The following applicants and providers must receive a criminal history and background check: ( )

a. Adoptive Parents. The criminal history and background check requirements applicable to adoptive parents are found in Subsection 671.02 of these rules. ( )

b. Child Care Facility Staff. The criminal history and background check requirements applicable to a child care facility are found in Section 109 of these rules. ( )

c. Children's Agency Facility Staff. The criminal history and background check requirements for a children's agency facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ( )

d. Children's Residential Care Facility Staff. The criminal history and background check requirements for a children's residential care facility are found in Section 109 of these rules and in Section 39-1210(10), Idaho Code. ( )

e. Children's Therapeutic Outdoor Program Staff. The criminal history and background check requirements for a children's therapeutic outdoor program are found in Section 810 of these rules and in Section 39-1208(8), Idaho Code. ( )

f. Day Care Facility Staff. The criminal history and background check requirements applicable to licensed day care providers are found in Section 109 of these rules and in Section 39-1105, Idaho Code. ( )

g. Licensed Foster Care Home. The criminal history and background check requirements applicable to licensed foster care are found in Section 404 of these rules and in Section 39-1211(4), Idaho Code. ( )

04. Exceptions to Criminal History and Background Checks. Criminal history and background checks are optional for certain youth placed in licensed foster homes and licensed residential care facilities. ( )

a. Youth in foster care who reach the age of eighteen (18) and continue to reside in the same licensed foster home. ( )

b. Youth in a children's residential care facility who reach the age of eighteen (18) and continue to live in the same licensed residential facility. ( )

05. Criminal History and Background Check at Any Time. The Department can require a criminal history and background check at any time on any individual who is a permanent resident of a licensed foster home or a licensed residential facility. **( )**

(BREAK IN CONTINUITY OF SECTIONS)

404. CRIMINAL HISTORY AND BACKGROUND CHECKS FOR FOSTER CARE LICENSE.
All applicants for a foster care license and other adult members of the household ~~*shall*~~ must comply with the provisions in IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks," and the following requirements: ~~*(3-30-01)*~~(____)

01. Required Procedures. Each applicant for a foster home license, and any other adult member~~*(s)*~~ of the household, ~~*shall*~~ must participate in a criminal history and background check as required by Section 39-1211(4), Idaho Code~~ *and in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"*~~. ~~*(3-30-01)*~~(____)

02. Change in Household Membership. By the next working day after another adult begins residing in a licensed foster home, a foster parent ~~*shall*~~ must notify the children's agency of the change in household membership and assure that the new adult member of the household ~~*shall*~~ will participate in a criminal history and background check~~*s*~~ as required by Section 39-1211(4), Idaho Code~~ *and in accordance with IDAPA 16.05.06, "Rules Governing Mandatory Criminal History Checks"*~~. ~~*(3-30-01)*~~(____)

03. Foster Parent's Child Turns Eighteen. A foster parent's child who turns eighteen (18) and continues to live in the home is not required to have a criminal history and background check. (____)

a. If the adult child moves out of the foster parent's home for longer than ninety (90) days and returns to live in the licensed foster home as a permanent resident, he must complete a criminal history and background check within fifteen (15) days of his return. (____)

b. If the adult child leaves the foster home for the purpose of higher education or military service, and returns for less than ninety (90) days, he is not considered to reside in the licensed foster home and is not required to complete a criminal history and background check. He cannot have any unsupervised direct care responsibilities for any foster children in the home. Should he remain in the foster home for ninety (90) days or longer, he must complete a criminal history and background check within fifteen (15) days. (____)

c. If the adult child continues to live in his parent's licensed foster home or on the same property, he must complete a criminal history and background check within fifteen (15) days of turning twenty-one (21), This requirement is not necessary if the adult child has completed a criminal history and background check between the ages of eighteen (18) and twenty-one (21). (____)

04. Criminal History and Background Check at Any Time. The Department retains the authority to require a criminal history and background check at any time on individuals who are permanent residents of a licensed foster home. (____)

(BREAK IN CONTINUITY OF SECTIONS)

430. CHILD CARE AND SAFETY REQUIREMENTS.
The property, structure, premises, and furnishings of a foster home ~~*shall*~~ must be constructed and maintained in good repair, in a clean condition, ~~*and*~~ free from safety hazards and dangerous machinery and equipment ~~*accessible to children*~~. Areas and equipment that present a hazard to children ~~*in care shall be fenced*~~ must not be accessible by children. ~~*(3-30-01)*~~(____)

01. Pools, Hot Tubs, Ponds, and Other Bodies of Water. Any licensed foster home with a body of water on or adjacent to their property must provide the following safeguards: (____)

a. Around any body of water, a foster child must have *appropriate* adult supervision *consistent* with the child's age, physical ability, and developmental level; (____)

b. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or (____)

c. If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; (____)

i. Pool or hot tub covers must be completely removed when in use; (____)

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; (____)

iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and (____)

d. Exterior ladders on above ground pools must be removed when the pool is not in use. (____)

02. Access by Children Five Years of Age and Under. Any licensed foster home that cares for children five (5) years of age and under and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: (____)

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; (____)

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; (____)

c. If the house forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and (____)

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. (____)

03. Irrigation Canals or Similar Body of Water. A licensed foster home caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable, whose property adjoins an irrigation canal or similar body of water, must have fencing that prevents access to the canal or similar body of water by the child. (____)

04. Other Safety Water Precautions. (____)

a. Wading pools must be empty when not being used; (____)

b. Children must be under direct supervision of an adult while using a wading pool; (____)

c. Toys that attract young children to the pool area must be kept picked up and away for the pool area when not in use; and (____)

d. A child who does not know how to swim must use an approved lifesaving personal flotation device. (____)

(BREAK IN CONTINUITY OF SECTIONS)

665. SERVICES FOR CHILD'S BIRTH PARENTS.
A children's agency that accepts custody of a child from a birth parent or parents ~~*shall*~~ must provide services for the parent or parents either directly or through cooperative arrangements. The children's agency ~~*shall*~~ must ensure that the legal rights of the birth parents are protected throughout the decision-making about release of records, as required by statutes governing Termination of Parental Rights and Adoptions. The children's agency ~~*shall*~~ will respect the expressed desires of either or both birth parents to provide for continuity of identity of the child's religious, cultural, racial, linguistic, and ethnic background, provided the desired request does not deny or delay placement of the child for adoption in accordance with the Multiethnic Placement Act (MEPA), and such considerations are legal. ~~*(3-30-01)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

671. FAMILY HOME STUDY, ADOPTION, APPLICATION PROCESS AND CONTENT.
A children's agency ~~*shall*~~ must complete a written family home study application before approving the home for the placement of a child for purposes of adoption. ~~*(3-30-01)*~~(____)

01. Background Information. An applicant for adoption ~~*shall*~~ must provide the

children's agency with the names of each adult member of the household, and signed releases to obtain any of the information required in Sections 400 through 499 of these rules for each member. ~~(3-30-01)~~(____)

02. Required Information. The adoptive home study ~~*shall*~~ must include applicable information required in Section 405 of these rules and ~~*shall include*~~ the following information: ~~(3-30-01)~~(____)

a. Any relevant findings from the criminal history and background checks; ~~(3-30-01)~~(____)

b. Each adoptive parent's reasons for applying to be an adoptive parent and prior efforts to adopt; (3-30-01)

c. Understanding of the purpose and permanence of adoption; (3-30-01)

d. How long the applicants have considered adoption; (3-30-01)

~~**e.** *Which partner initiated the adoption;* (3-30-01)~~

~~**f**~~**e.** The attitudes toward adoption by immediate and extended members of the family and other persons who reside in the home; (3-30-01)

~~**g**~~**f.** Family's attitudes toward the adoptive child's family and willingness to allow them contact with the child after adoption; (3-30-01)

~~**h**~~**g.** Prior and current experiences with out-of-home care for the applicant's children; (3-30-01)

~~**i**~~**h.** Applicant's experience with other helping agencies or resources in their communities; (3-30-01)

~~**j**~~**i.** Applicant's comfort level in seeking help from services outside the family; (3-30-01)

~~**k**~~**j.** Applicant's awareness of the potential for the child to have identity problems and loss regarding separation from birth parents; (3-30-01)

~~**l**~~**k.** Applicants understanding of and disclosure of the circumstances of the adoption to the child; (3-30-01)

~~**m**~~**l.** Applicants understanding that the child will have questions about birth parents and other relatives; (3-30-01)

~~**n**~~**m.** Specifications of children preferred by the family that include the number of children, and the age, gender, race, ethnic background, social, emotional and educational characteristics of children preferred; (3-30-01)

~~o~~**n.** Information on the adoptive family's medical insurance coverage including insurance carrier, policy number, eligibility of new adoptive family member(s), limitations and exclusions; and (3-30-01)

~~p~~**o.** Any other information deemed necessary to complete the study. (3-30-01)

(BREAK IN CONTINUITY OF SECTIONS)

673. SELECTION OF AN ADOPTIVE PLACEMENT.
The factors listed are in random order and are not intended to reflect relative priority. A children's agency ~~*shall*~~ must consider the following factors in selecting suitable adoptive parents for a child: ~~*(3-30-01)*~~(____)

01. Child's Needs. The physical, emotional, medical, and educational needs of the child. (3-30-01)

02. Continued Contact. The child's needs for continued contact with the birth parent(s), siblings, relatives, foster parents, and other persons significant to the child. (3-30-01)

03. Racial, Ethnic, and Cultural Considerations. In accordance with the Multiethnic Placement Act (MEPA), the child's racial, ethnic, cultural identity, heritage, and background may only be considered if a written assessment of the child indicates that such consideration is in the best interest of the child. ~~*(3-30-01)*~~(____)

04. Authorized Placement on Approved Recommendations. The children's agency ~~*shall*~~ must require authorization by a chief administrator after the recommendations of approval are given by a service worker supervisor. The approval or denial ~~*shall*~~ must be documented in the case record. ~~*(3-30-01)*~~(____)

05. Placement. A children's agency ~~*shall*~~ will place a child with children's agency-approved adoptive parents consistent with the recommendations specified in the adoptive family study and the needs of the child identified in these rules. ~~*(3-30-01)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

749. SWIMMING POOL, POND, OR OTHER BODY OF WATER.
An above-ground or in-ground swimming pool, pond, or other body of water on the premises of a children's residential care facility for use by children ~~*shall*~~ must comply with Section ~~*39-105*~~ 56-1003(3)(d), Idaho Code, and applicable swimming pool construction, sanitation, water quality standards, water temperature, recreational bathing and life saving provisions of federal, state, county and municipal laws, regulations and ordinances. ~~*They shall be maintained in a clean and safe manner, safeguarded when not in use by children, have sufficiently clear water to allow easy*~~

~~visibility in all areas of the pool or body of water used by children, and maintain at least one (1) staff on duty at all times when children are in the water who has a valid lifesaving or lifeguard certificate issued by a nationally recognized organization. (3-30-01)~~(____)

01. Staff Person with Lifesaving or Lifeguard Certificate. The facility must maintain at least one (1) staff person who has a valid lifesaving or lifeguard certificate issued by a nationally recognized organization. This certified staff person must be on duty at all times when children are in the water. (____)

02. Pools, Hot Tubs, Ponds, and Other Bodies of Water. The facility must maintain the pools, hot tubs, ponds, and other bodies of water on its property in good repair, in a clean condition, and free from safety hazards and dangerous machinery and equipment. Areas and equipment that present a hazard to children must not be accessible by children. The following safeguards must be provided: (____)

a. The area surrounding a body of water must be fenced and locked in a manner that prevents access by children; or (____)

b. If the area surrounding a body of water is not fenced and locked, there must be a secured protective covering that will not allow access by a child; (____)

i. Pool or hot tub covers must be completely removed when in use; (____)

ii. When the pool or hot tub cover is in place, the cover must be free from standing water; (____)

iii. Covers must be kept locked at all times when the pool or hot tub is not in use; and (____)

c. A reaching pole with a hook and a ring buoy must be accessible; and (____)

d. Exterior ladders on above ground pools must be removed when the pool is not in use. (____)

03. Access by Children Five Years of Age and Under. Any children's residential care facility that cares for children five (5) years of age and under, and chooses to prevent access to a body of water by fencing must provide a fence that meets the following requirements: (____)

a. The fence must be at least four (4) feet high with no vertical opening more than four (4) inches wide, be designed so that a young child cannot climb or squeeze under or through the fence, and surround all sides of the pool or pond; (____)

b. The gate must be self-closing and have a self-latching mechanism in proper working order out of the reach of young children; (____)

c. If a building forms one (1) side of the barrier for the pool, doors that provide unrestricted access to the pool must have alarms that produce an audible sound when the doors are opened; and (____)

d. Furniture or other large objects must not be left near the fence that would enable a child to climb on the furniture and gain access to the pool. (____)

04. Irrigation Canals or Similar Body of Water. A children's residential care facility caring for a child five (5) years of age and under or a child who is physically or developmentally vulnerable whose property adjoins an irrigation canal must have fencing that prevents access to the canal or similar body of water by the child. (____)

05. Other Water Safety Precautions. (____)

a. Wading pools must be empty when not being used; (____)

b. Children must be under the direct supervision of an adult while using a wading pool; (____)

c. Toys that attract young children to the pool area must be kept picked up and away from the pool area when not in use; and (____)

d. A child who does not know how to swim must use an approved lifesaving personal flotation device. (____)

(BREAK IN CONTINUITY OF SECTIONS)

784. STAFF QUALIFICATIONS FOR CHILDREN'S ALCOHOL-DRUG ABUSE RESIDENTIAL FACILITY.

01. Chief Administrator. Qualifications of the chief administrator ~~*shall*~~ must be verified through written documentation of work experience, education and classroom instruction. The chief administrator ~~*shall*~~ must have at least: ~~*(3-30-01)*~~(____)

a. A Master's degree from an accredited college or university in a relevant field and two (2) years of paid full-time experience with one (1) year in administration; or (3-30-01)

b. A Bachelor's degree from an accredited college or university in a relevant field and three (3) years of paid full-time experience with one (1) year in administration; and (3-30-01)

c. Knowledge and demonstrated competence in planning, budget development and other administrative duties. (3-30-01)

02. Clinical Director Qualifications. A clinical director ~~*shall*~~ must have at least: ~~*(3-30-01)*~~(____)

a. A Master's Degree from an accredited college or university in a relevant field and five (5) years of paid full-time experience with three (3) years experience in direct alcohol-drug

abuse treatment; (3-30-01)

b. Knowledge and experience and demonstrated competence in treatment including client evaluation, counseling techniques, relapse prevention, case management and family systems; and (3-30-01)

c. Working knowledge of the normal process of child and adolescent growth and development, the effects of alcohol and drugs on a child's growth and development. (3-30-01)

03. Program Supervision Qualifications. A program supervisor, located at the children's residential care facility ~~*shall*~~ must possess at least: ~~*(3-30-01)*~~( )

a. Five (5) years of full-time paid experience in alcohol-drug abuse treatment with at least two (2) years in direct treatment; or (3-30-01)

b. A Master's degree from an accredited college or university and three (3) years of paid full-time experience with two (2) years in direct alcohol-drug treatment; or (3-30-01)

c. A Bachelor's degree from an accredited college or university in a relevant field and four (4) years of paid full-time experience with two (2) years in direct alcohol-drug treatment; and (3-30-01)

d. One (1) year of paid full-time experience in supervision; and (3-30-01)

e. Knowledge and experience and demonstrated competence in alcohol-drug treatment, including client evaluation, counseling techniques, relapse prevention, case management and family systems; and (3-30-01)

f. Working knowledge of the normal process of child and adolescent growth and development, the effects of alcohol-drugs on a child's growth, and development. (3-30-01)

04. Counselor Qualifications. The~~*re shall be*~~ facility must have a ratio of at least one (1) alcohol-drug counselor for every six (6) children in treatment~~*or fraction thereof*~~. ~~*An*~~ The alcohol-drug counselor ~~*shall have*~~ must meet the following qualifications: ~~*(3-30-01)*~~( )

a. Five (5) years of full-time paid experience in alcohol-drug abuse treatment with at least two (2) years in direct alcohol-drug treatment with children; or (3-30-01)

b. A Bachelor's degree from an accredited college or university in a relevant field and two (2) years of paid full-time experience with one (1) year in direct alcohol-drug abuse treatment with children; and (3-30-01)

c. Possess certification or licensure by a state or nationally recognized alcohol-drug addiction counselor credentialing or certifying organization which requires: (3-30-01)

i. Knowledge and skill acquired through at least two-thousand (2000) hours of a combination of specialized training, education and experience with direct treatment of children; and (3-30-01)

ii. Thirty (30) hours of classroom instruction in child development; and (3-30-01)

iii. A working knowledge of family systems as documented through experience, course-work or training. (3-30-01)

d. An alcohol-drug counselor hired prior to ~~*the effective date of these rules shall meet all requirements by June 30, 2004*~~ January 1, 2007, will have three (3) years to complete the minimum requirements as described in Subsections 784.04.a. through 784.04.c. of these rules. A counselor hired ~~*after June 30, 2001 will have three (3) years from date of employment to*~~ on January 1, 2007, or after must meet ~~*these criteria*~~ all requirements. (3-30-01)

05. Direct Care Staff Qualifications. Direct care staff ~~*shall*~~ must have at least sixteen (16) hours of training in basic alcohol-drug abuse issues, addressing dependency, enabling, co-dependency and confidentiality within sixty (60) days of employment. ~~*(3-30-01)*~~(____)

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.04 - RULES FOR STATEWIDE AND REGIONAL INTERDEPARTMENTAL SUBSTANCE ABUSE COORDINATING COMMITTEES

DOCKET NO. 16-0604-0601 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections The action is authorized pursuant to Chapter 3, Title 39, Idaho Code and HB833 (2006) amending this chapter of Idaho Code.

DESCRIPTIVE SUMMARY: **The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Vol. 06-9, page 95.**

FISCAL IMPACT: **The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: The repeal of this chapter of rule by itself does not create a fiscal impact; however, the amendments to Idaho Code found in HB833 do create a fiscal impact. The Department of Health and Welfare determined an estimated fiscal impact to the Department of $14,500. This amount is being redirected from existing funds that were being used for other costs associated with substance abuse issues. In addition to the cost for Health and Welfare, it is estimated that the partnering agencies would incur a cost of approximately $75,000 annually. This cumulative amount will come from existing funds since no additional funding has been provided. All identified funds in this fiscal impact are general funds.**

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Bethany Gadzinski at (208) 334-5756.

DATED this 3rd day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Chapter 3, Title 39, Idaho Code.

DEPARTMENT OF HEALTH & WELFARE ***Docket No. 16-0604-0601***
Statewide/Regional Substance Abuse Coordinating Committee ***PENDING RULE***

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a non-technical explanation of the substance and purpose of the proposed rulemaking: This chapter of rule is being repealed due to new legislation adopted by the 2006 Legislature under HB833. The new statute replaces the text in this chapter of rule with new guidelines for the substance abuse coordinating committees eliminating the need for this chapter.

FEE SUMMARY: There is no fee or charge being imposed or increased in this docket.

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year. The repeal of this chapter of rule by itself does not create a fiscal impact; however, the amendments to Idaho Code found in HB833 do create a fiscal impact. The Department of Health and Welfare determined an estimated fiscal impact to the Department of $14,500. This amount is being redirected from existing funds that were being used for other costs associated with substance abuse issues. In addition to the cost for Health and Welfare, it is estimated that the partnering agencies would incur a cost of approximately $75,000 annually. This cumulative amount will come from existing funds since no additional funding has been provided. All identified funds in this fiscal impact are general funds.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because changes to rule are being made to implement legislation passed during the 2006 legislative session.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Bethany Gadzinski at (208) 334-5756.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 28th day of July, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.06.04 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.06 - DEVELOPMENTAL DISABILITIES FAMILY SUPPORT AND IN-HOME ASSISTANCE

DOCKET NO. 16-0606-0601 (NEW CHAPTER)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 56-202(b) and 39-5103, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The amendments to the pending rule clarify the definition of the term "family," clarify and further streamline the grievance process, and add one additional reason for termination of Family Support assistance. Changes were based on input received during the public comment period. Pursuant to Section 67-5228, Idaho Code, typographical, transcriptional, and/or clerical corrections have been made to the rule and are being published with this Notice of Rulemaking as part of the pending rule.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 298 through 305.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cameron Gilliland at (208) 334-5536.

DATED this 6th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

DEPARTMENT OF HEALTH & WELFARE ***Docket No. 16-0606-0601***
Developmental Disabilities Family Support/In-Home Assistance ***PENDING RULE***

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. This rulemaking is under the authority of Sections 56-202(b) and 39-5103, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this rulemaking will be held as follows:

Wednesday, October 18, 2006 - 6:00 pm
Department of Health & Welfare Region IV Office
1720 Westgate Drive
Suite D, Room 119
Boise, Idaho 83704

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

In order to provide enforceable standards for the Developmental Disabilities Family Support and In-Home Assistance program, the Department has created a new chapter of rule under the provisions of Title 39, Chapter 51, Idaho Code. This program provides funding for services and equipment to help individuals with developmental disabilities to continue to live with their families, prevent institutionalization, improve access to community supports, use existing resources efficiently, and obtain enhanced care. This new chapter provides rules to replace the guidelines that are currently used to administer the program and adds a new grievance procedure option as a less costly alternative to the more formal administrative appeals process that still remains as an option.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year.

There is no anticipated fiscal impact to the state general fund as result of this new chapter of rules. The costs for this program have been appropriated through the Department's budget process and will be cost-neutral.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was conducted. The Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, June 7, 2006, Vol. 06-6, page 105.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cameron Gilliland at (208) 334-5536.

Anyone may submit written comments regarding this proposed rulemaking. All written comments

must be directed to the undersigned at the address below and delivered on or before Wednesday, October 25, 2006.

DATED this 11th day of August, 2006.

Sherri Kovach, Program Supervisor
DHW – Administrative Procedures Section
450 West State Street - 10th Floor
P.O. Box 83720, Boise, Idaho 83720-0036
(208) 334-5564 phone; (208) 334-6558 fax; kovachs@idhw.state.id.us e-mail

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 16
TITLE 06
CHAPTER 06

16.06.06 - DEVELOPMENTAL DISABILITIES FAMILY SUPPORT AND IN-HOME ASSISTANCE

000. LEGAL AUTHORITY.
The Director of the Idaho Department of Health and Welfare has the authority to promulgate these rules under Sections 56-202(b) and 39-5103, Idaho Code. ( )

001. TITLE AND SCOPE.

01. Title. The title of these rules is IDAPA 16.06.06, "Developmental Disabilities Family Support and In-Home Assistance." ( )

02. Scope. This chapter contains the general standards for administering the Developmental Disabilities Family Support and In-Home Assistance program, hereafter referred to as "DD Family Support." ( )

002. WRITTEN INTERPRETATIONS.
There are no written interpretations for this chapter of rules. ( )

003. GRIEVANCE PROCEDURE AND ADMINISTRATIVE APPEALS.

01. Grievance Procedure. Families who wish to appeal a benefit decision may file a grievance in accordance with Section 025 of these rules. The purpose of this option is to provide a means of resolving disputes over benefits without the need to resort to the formal administrative

appeals process. However, the administrative appeals process remains available as an option. ( )

02. Administrative Appeals. Administrative appeals are governed by IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory Rulings." ( )

004. INCORPORATION BY REFERENCE.
There are no documents incorporated by reference in this chapter of rules. ( )

005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- TELEPHONE -- INTERNET WEBSITE.

01. Office Hours. Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. ( )

02. Mailing Address. The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. ( )

03. Street Address. The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. ( )

04. Telephone. (208) 334-5500. ( )

05. Internet Website Address. The website address is: http://www.healthandwelfare.idaho.gov. ( )

006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.

01. Confidential Records. Any information about an individual covered by these rules and contained in the Department's records must comply with IDAPA 16.05.01, "Use and Disclosure of Department Records." ( )

02. Public Records. The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. ( )

007. (RESERVED).

008. AUDIT, INVESTIGATION AND ENFORCEMENT.
In addition to any actions specified in these rules, the Department may audit, investigate and take enforcement action under the provisions of IDAPA 16.05.07, "Investigation and Enforcement of Fraud, Abuse and Misconduct." ( )

009. (RESERVED).

010. DEFINITIONS.
For the purposes of these rules, the following terms are used as defined below: ( )

01. Department. The Idaho Department of Health and Welfare (IDHW) or a person authorized to act on behalf of the Department. ( )

02. Developmental Disability. A developmental disability, as defined in Section 66-402, Idaho Code, means a chronic disability of a person which appears before the age of twenty-two (22) years of age and: ( )

a. Is attributable to an impairment, such as mental retardation, cerebral palsy, epilepsy, autism or other condition found to be closely related to or similar to one (1) of these impairments, which requires similar treatment or services or is attributable to dyslexia resulting from such impairments; and ( )

b. Results in substantial functional limitations in three (3) or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and ( )

c. Reflects the need for a combination or sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and individually planned and coordinated. ( )

03. Developmental Disabilities (DD) Family Support and In-Home Assistance Program. A Department program that operates under the authority of Title 39, Chapter 51, Idaho Code. The purpose of this program, also known simply as the "DD Family Support Program," is to provide assistance for families of individuals with developmental disabilities who are institutionalized, or to families of such individuals for whom institutionalization may be imminent, and who will, as a result of DD Family Support assistance, be able to return or keep their family member home. Additionally, DD Family Support assistance is intended to help families prior to a crisis in order to prevent the need for a family member with a developmental disability to move to an institutional or residential placement outside of the family's home.( )

04. Developmental Disabilities (DD) Family Support Assistance. Funding provided to eligible families under the DD Family Support program. ( )

05. Developmental Disabilities (DD) Family Support Council. A volunteer group, made up mostly of people with developmental disabilities or their family members, whose purpose is to advise and consult with the Department in matters relating to the DD Family Support program. ( )

06. Director. The Director of the Idaho Department of Health and Welfare or his designee. ( )

07. Family. The term "family" does not include paid providers of care *or providers of foster care*. A family, as defined in Section 39-5102(6), Idaho Code, is a group of interdependent persons residing in the same household and includes an individual with a developmental disability and one (1) or more of the following: ( )

a. A birth or adoptive mother or father, stepparent, brother, sister, or any

combination; ( )

b. Extended blood relatives, such as a grandparent, aunt, uncle, nephew, or niece; or ( )

c. A legal guardian. ( )

08. Title IV-E. The title under the Social Security Act that provides funding for foster care maintenance and adoption assistance payments for certain eligible children. ( )

011. -- 024. (RESERVED).

025. GRIEVANCE PROCEDURE.

01. How Does a Family File a Grievance? Families who wish to file a grievance regarding a benefit decision must do so within thirty (30) days of receiving the decision. To file a grievance, families must submit a written request that outlines their reasoning to one (1) of the following: ( )

a. A DD Family Support Council, where available; ( )

b. The Regional Program Manager; or ( )

c. The Department's Central Office Program Manager. ( )

02. How is the Grievance Request Reviewed? ( )

a. The grievance request will be reviewed by the local DD Family Support Council, where available. ( )

b. If a DD Family Support Council is not available, or if a family disagrees with the decision of the DD Family Support Council, they may present a written grievance request to the Regional Program Manager. ( )

c. The Regional Program Manager will then *contact the FACS Central Office Program Manager and* two (2) individuals *from the region* to assist him with his review of the grievance. The two (2) individuals *from the region* selected by the *Regional* Program Manager may include members of the local DD Family Support Council, where available, or staff members with expertise in DD Family Support or Developmental Disabilities. *The Regional Program Manager will issue a written decision regarding the grievance request within twenty (20) days after the grievance request was received.* ( )

d. The Regional Program Manager will render a written decision on the grievance request within twenty (20) days of receiving the grievance. ( )

0*3*. What Other Remedies are Available After the Grievance Process? If the family is still not satisfied with the decision, they may *file* an administrative appeal as provided under IDAPA 16.05.03, "Rules Governing Contested Case Proceedings and Declaratory

Rulings." ( )

026. -- 099. (RESERVED).

100. WHO IS ELIGIBLE FOR DEVELOPMENTAL DISABILITIES (DD) FAMILY SUPPORT ASSISTANCE?
Families who reside in Idaho and include a member with a developmental disability are eligible to receive DD Family Support assistance. The family must express a desire for the member with a developmental disability to reside at home and must submit a DD Family Support application to receive services. Families must obtain the agreed-upon services and account for the assistance funds expended for these services or equipment. ( )

01. How is the Determination of a Developmental Disability Made? The family member with a developmental disability must be determined by the Department to meet the developmental disability standards under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Section 501. ( )

02. What Financial Information Must Be Provided? Families will not be asked to provide financial information as a requirement for participation in the DD Family Support program. Eligibility for the DD Family Support program will be determined by the Department separately from the determination of the benefit. The Department may require additional information of families in order to make eligibility decisions. ( )

101. WHO IS NOT ELIGIBLE TO RECEIVE DD FAMILY SUPPORT ASSISTANCE?
Paid providers of care are not eligible for DD Family Support assistance. A paid provider of care is anyone who receives state or federal payment for the care or therapy of an individual who has a developmental disability. An adoptive family receiving Title IV-E funds as part of an adoption agreement is not considered to be a paid provider of care and will not be excluded from receiving DD Family Support assistance because they receive Title IV-E funds. ( )

102. -- 199. (RESERVED).

200. HOW DOES A FAMILY APPLY FOR DD FAMILY SUPPORT ASSISTANCE?

01. Application for Service. Each family who wishes to receive DD Family Support assistance must apply for the assistance using the Department-approved "DD Family Support Application." ( )

02. Prior Authorization of Expenditure. Due to the limited funds available, the Department must approve the application and prior authorize the expenditure of assistance funds before the award of assistance is made to ensure that funds for the requested assistance for the identified needs are available. ( )

201. -- 299. (RESERVED).

300. HOW IS THE AMOUNT OF DD FAMILY SUPPORT ASSISTANCE DETERMINED?

01. Decisions Made Case-By-Case. The Department will determine each award of DD Family Support assistance on a case-by-case basis, with advice from DD Family Support Councils where they are available. The award of DD Family Support assistance in one (1) case sets no precedence for the award of DD Family Support assistance in the future. There is no guarantee that DD Family Support assistance funds will be available when a family applies. The Department may require additional information from families in order to make benefit decisions. ( )

02. Bases for DD Family Support Assistance Decisions. The Department will base its decisions regarding the award of DD Family Support assistance on the following: ( )

a. The ability of the assistance to allow an individual with a developmental disability to move into his family's home from an institution. ( )

b. The ability of the assistance to prevent the necessity of an individual moving into an institution. ( )

c. Priority will be given to families whose member with a developmental disability would face the most severe consequences without supports. ( )

d. Priority will be given to families whose member with a developmental disability has the greatest urgency of need. ( )

e. DD Family Support assistance is contingent on the availability of state and regional funding. ( )

301. WHAT SERVICES AND EQUIPMENT MAY BE PURCHASED USING DD FAMILY SUPPORT ASSISTANCE?

DD Family Support assistance can be used for any of the following items when those items are listed on the approved DD Family Support application. Assistance may only be used when no other payment source is available to the individual with a developmental disability, or his family, to purchase the items requested on the DD Family Support application. The following services and equipment may be purchased under the DD Family Support program: ( )

01. Diagnostic or Evaluative Procedures. Diagnostic and evaluative procedures that are necessary to ensure the health and well-being of the individual with a developmental disability. ( )

02. Special Equipment. Special equipment or items required by the individual with a developmental disability or needed to assist the family to care for that individual. ( )

03. Therapeutic Services. Therapeutic Services to assist the individual with a developmental disability toward independence, or to maintain or improve his health, or to enhance his quality of life. ( )

04. Specialized Dietary Needs. Foods or nutrients required to meet the specialized dietary needs of the individual with a developmental disability. ( )

05. Medical and Dental Care. Medical and dental care that is not covered under the family's health insurance or publicly-funded programs. Such care must be required to maintain or improve health or to enhance quality of life for the family member with a developmental disability. ( )

06. Home Health, Nursing, or Personal Assistance Services (PCS). Home health, nursing, or personal assistance services may be purchased when the family is unable to meet the care demands of the individual with a developmental disability. ( )

07. Counseling Services. Counseling Services may be purchased for the individual with a developmental disability, or his family. Such counseling services can include behavior management. ( )

08. Respite Care. ( )

a. Respite Care may be purchased using DD Family Supports assistance. Respite care may not be utilized in the place of day care when all caregiving family members are working. Assistance may be utilized for respite care or for out-of-the-ordinary expenses to cover supervised care beyond care costs expected for a typical person of the same age. ( )

b. Additional costs for the care of siblings during the provision of respite care may be covered when it is necessary for the primary caregivers to be absent. When the family caregivers must accompany the individual with a disability to treatment or evaluation appointments, reasonable sibling care costs may be covered. ( )

09. Adaptations or Technical Assistance. Environmental adaptations or technical assistance to permit successful integration and access for the individual with a developmental disability. ( )

10. Special Clothing. Specialized or adapted clothing required due to the family member's developmental disability, including incontinence supplies. Assistance may be used only for supplies that would exceed what a family would normally purchase except in extreme circumstances. ( )

11. Supports for Recreational Activities. Supports or assistance that allow the individual with a disability to join family and friends in leisure time or recreational activities. Assistance funds may not be used to pay for standard tickets, fees, or other costs that would typically be incurred by a person without a developmental disability. The necessary supports must be related to meeting special needs due to the developmental disability. ( )

12. Transportation. Transportation related to the care of the family member with a developmental disability. ( )

13. Housing Modifications. Housing modifications for the purposes of accessibility or ease in handling related to the needs of the person with a developmental disability. ( )

14. Similar or Related Costs. Costs for items or services that are similar in nature to the items listed above or are related to the effectiveness of the purchase of the items above.( )

302. WHAT PAYMENT OPTIONS ARE AVAILABLE FOR DD FAMILY SUPPORT ASSISTANCE?
Families may use DD Family Support assistance only for services and equipment authorized on the approved DD Family Support application. Families may request any of the following payment options for their DD Family Support assistance. ( )

01. Advance Payment. The Department may authorize advance payment to families on an as-needed basis. If a family does not utilize all of the assistance provided under the approved DD Family Support application, they must return any unspent funds to the Department. ( )

02. Payment After the Service Has Been Delivered or Item Purchased. The Department may reimburse families for services or equipment after the service has been delivered or the item purchased when those costs were prior-authorized on an approved DD Family Support application. ( )

03. Payment Directly to Vendors or Providers of Services or Equipment. The Department may pay vendors or providers of services or equipment directly. In order to be paid directly, vendors must provide the Department with an itemized invoice that includes vendor name, address, Social Security number or Tax Identification number, and other documentation as requested by the Department. ( )

303. WHAT ARE THE DOCUMENTATION REQUIREMENTS FOR DD FAMILY SUPPORT ASSISTANCE?

01. Documentation Requirements for the Family. Each family who receives DD Family Support assistance must provide documentation to the Department of how the DD Family Support assistance was spent. Documentation must be provided on the Department-approved forms. Families who do not account for the use of DD Family Support assistance or refuse to repay assistance funds not used for the approved purposes, may be deemed ineligible for DD Family Support assistance for a period of time, determined by the Department, that will not exceed twelve (12) months. ( )

02. Documentation Requirements for the Developmental Disabilities Program. The Developmental Disabilities Program will maintain documentation of DD Family Support applications and a record of approved expenditures. ( )

304. HOW IS DD FAMILY SUPPORT ASSISTANCE TERMINATED?
The Department may terminate DD Family Support assistance under any of the following conditions: ( )

01. Family Action. The family requests termination; ( )

02. Death of the Individual with a Disability. The individual in the family with a developmental disability dies; ( )

03. Ineligibility. The eligibility criteria for DD Family Support assistance is no longer

met; or ( )

04. Funding. Inadequate funds are available to continue providing DD Family Support assistance. ( )

05. Failure to Account for or Misuse of Funds. *Families are unable or unwilling to account for funds previously received, or funds have been misused.* ( )

305. -- 399. (RESERVED).

400. WHAT ARE THE PURPOSE, COMPOSITION, AND ROLES OF A DD FAMILY SUPPORT COUNCIL?

01. The Purpose of a DD Family Support Council. A DD Family Support Council is a volunteer group whose purpose is to advise and consult with the Department in matters relating to DD Family Support. ( )

02. Composition of a DD Family Support Council. The majority of a council's members must be people with a developmental disability or family members of people with a developmental disability. A council may also include other community members. Each DD Family Support Council member must be selected and approved by the Department's Regional Program Manager. The Department will make efforts to assure broad geographic representation. The DD Family Support Council members will be registered as volunteers with the Department of Health and Welfare. ( )

03. Roles of a DD Family Support Council. The roles of a DD Family Support Council include: ( )

a. Advise the Department on the use of DD Family Support funds; ( )

b. Offer program guidance through assistance with the establishment of a family-friendly procedure for administering DD Family Support funds; ( )

c. Provide feedback and review of decisions related to the administration of DD Family Support funds; ( )

d. Provide information and referral about community supports and available resources to augment DD Family Support program funds and serve as a secondary resource when denials are necessary; and ( )

e. Provide advocacy for the DD Family Support program. ( )

401. -- 999. (RESERVED).

IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

16.06.12 - RULES GOVERNING THE IDAHO CHILD CARE PROGRAM (ICCP)

DOCKET NO. 16-0612-0601 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended, or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended, or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 56-202, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, page 306.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

DATED this 3rd day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 56-202, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DEPARTMENT OF HEALTH & WELFARE ***Docket No. 16-0612-0601***
Rules Governing the Idaho Child Care Program ***PENDING RULE***

DESCRIPTIVE SUMMARY: **The following is a non-technical explanation of the substance and purpose of the proposed rule making:**

This entire chapter of rules is being repealed. It will be replaced by a completely rewritten chapter proposed under Docket No. 16-0612-0602 that is published in this Bulletin immediately following this notice.

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted prior to the publication of the proposed rule because the existing chapter of rules is being repealed as part of the promulgation process for the rewrite. The entire ICCP chapter is being rewritten based on recommendations from the Office of Performance Evaluation (OPE), the Idaho Childcare Advisory Council, and Department staff.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary or proposed rule, contact Genie Sue Weppner or Cheryl Bowers at (208) 334-5815.

Anyone can submit written comments regarding this rule. All written comments and data concerning the rule must be directed to the undersigned and must be postmarked on or before October 25, 2006.

DATED this 10th day of August, 2006.

Sherri Kovach
Program Supervisor
DHW – Administrative Procedures Section
450 West State Street, 10th Floor
P.O. Box 83720
Boise, Idaho 83720-0036
(208) 334-5564 phone
(208) 334-6558 fax
kovachs@idhw.state.id.us e-mail

IDAPA 16.06.12 IS BEING REPEALED IN ITS ENTIRETY.

IDAPA 19 - IDAHO STATE BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912(4), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the temporary and proposed rule was published in the May 3, 2006, Idaho Administrative Bulletin, Volume 06-5, pages 60 through 64.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of July, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 1, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section 54-912(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an

agency not later than 5:00 p.m. (MST) on May 17, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and a concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this temporary/proposed rulemaking is to provide needed rule revisions to implement legislation (SB 1343) as enacted during the 2006 Legislative session. SB 1343 authorized the Board of Dentistry to conduct its licensing activities on a biennial basis, as opposed to the previously existing annual licensing system. Biennial licensing will allow the Board of Dentistry to stagger the renewal of dental and dental hygiene licenses over a two (2) year period so that only one (1) category of professional license would be renewed in each calendar year. This temporary/proposed rulemaking will implement the biennial licensing legislation by revising rules to effectuate a biennial licensing system and by deleting all references in the rules to annual or yearly licensing. This staggered, biennial renewal of licenses will create efficiencies by reducing the staff time and costs associated with license renewals by approximately fifty percent (50%). Other medical boards in Idaho renew professional licenses on a multiple year basis.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section 67-5226(1)(b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reason:

It is necessary to adopt this temporary/proposed administrative rule in order to comply with deadlines in governing law. The purpose of the temporary/proposed rulemaking is to promulgate administrative rules needed to implement SB 1343 as enacted by the Idaho Legislature during the 2006 legislative session. SB 1343 authorized the Board of Dentistry to conduct professional licensing on a biennial basis.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased.

This rule does not impose any new fees or increase the existing license renewal fees. SB 1343 changed the Board of Dentistry's professional license renewal cycle from annual to biennial, with the result being that every license will be effective for two (2) years rather than the current one (1) year period. This rule adjusted the amounts payable for license fees consistent with the longer effective period of the professional licenses. For example, an active status dental hygienist will now pay $140.00 for a two (2) year license as opposed to previously paying $70.00 for a one (1) year license.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no fiscal impact on the state general fund as the result of these administrative rule changes.

NEGOTIATED RULEMAKING: In that this rule is needed to implement SB 1343, negotiated rulemaking was not conducted on this temporary rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before May 24, 2006.

DATED this 12th day of April, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
708½ W. Franklin Street
Boise, Idaho 83702
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

012. LICENSE AND APPLICATION FEES (RULE 12).
The ~~*annual*~~ license fees and application fees shall be as follows: ~~*(7-1-93)*~~(7-1-06)T

01. Application Fees for Dentists: (7-1-91)

a. General: (3-18-99)

i. By examination -- one hundred dollars ($100). (3-18-99)

ii. By credentials -- six hundred dollars ($600). (3-18-99)

b. Specialty: (7-1-91)

i. By examination -- one hundred dollars ($100). (7-1-91)

ii. By credentials -- six hundred dollars ($600). (3-18-99)

02. Application Fees for Dental Hygienists: (7-1-91)

a. By examination -- fifty dollars ($50). (7-1-91)

b. By credentials -- one hundred and fifty dollars ($150). (7-1-92)

03. ~~*Annual*~~ **Biennial License Fees for Dentists**: ~~*(3-18-99)*~~(7-1-06)T

a. Active -- ~~*one*~~ three hundred ~~*and fifty*~~ dollars ($~~*15*~~300). ~~*(3-18-99)*~~(7-1-06)T

b. Inactive -- ~~*seventy-five*~~ one hundred and fifty dollars ($~~*75*~~150). ~~*(7-1-91)*~~(7-1-06)T

c. Specialty -- ~~*one*~~ three hundred ~~*and fifty*~~ dollars ($~~*15*~~300). ~~*(3-18-99)*~~(7-1-06)T

04. ~~*Annual*~~ **Biennial License Fees for Hygienists**: ~~*(3-18-99)*~~(7-1-06)T

a. Active -- ~~*seventy*~~ one hundred and forty dollars ($~~*7*~~140). ~~*(3-18-99)*~~(7-1-06)T

b. Inactive -- ~~*forty*~~ eighty dollars ($~~*4*~~80). ~~*(7-1-91)*~~(7-1-06)T

05. Application Fees for General Anesthesia and Conscious Sedation Permits: (4-2-03)

a. Initial Application -- three hundred dollars ($300). (4-2-03)

b. Renewal Application -- three hundred dollars ($300). (4-2-03)

c. Reinstatement Application -- three hundred dollars ($300). (4-2-03)

013. FEES -- GENERAL (RULE 13).
A license shall not be issued or renewed unless the fee is paid. Application fees are not refunded. License fees shall be prorated from date of licensure to the next ~~*annual*~~ successive license renewal date. ~~*(7-1-93)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).
Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

01. Extended Access Dental Hygiene Endorsement. Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (4-6-05)

a. The person has been licensed as a dental hygienist during the two (2) year period immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

b. For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care program. (4-6-05)

02. Extended Access Dental Hygiene Endorsement Exception. Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care program in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. (4-6-05)

03. Volunteer Dental Hygiene Services. A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances: (4-6-05)

a. The dental hygiene services must be performed in an extended access oral health care program under the supervision of a dentist who is employed or retained by or is a volunteer for the program; (4-6-05)

b. The dental hygiene services performed shall be limited to oral health screening, preparation of health history, fluoride treatment, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventative agents, the application of pit and fissure sealants with recommendation that patient will be seen by a dentist and preventive dental health instruction; (4-6-05)

c. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and (4-6-05)

d. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. (4-6-05)

04. Renewal. Upon payment of the appropriate ~~*annual*~~ license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement ~~*upon April 1 of each year*~~ for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits.
~~*(4-6-05)*~~(7-1-06)T

(BREAK IN CONTINUITY OF SECTIONS)

050. CONTINUING EDUCATION FOR DENTISTS (RULE 50).
Effective October 1994, renewal of any active dental license will require evidence of completion of continuing education or volunteer dental practice that meets the following requirements. (4-6-05)

01. Requirements: (3-18-99)

a. All active dentists must hold a current CPR card. (7-1-93)

b. All active dentists shall acquire ~~*fifteen*~~ thirty (~~*15*~~30) credits of continuing education in each biennial renewal ~~*year*~~ period. One (1) credit is defined as one (1) hour of instruction. ~~*(7-1-93)*~~(7-1-06)T

c. Continuing education must be oral health/health-related for the professional development of a dentist. The ~~*fifteen*~~ thirty (~~*15*~~30) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, and viewing of videotape or listening to other media devoted to dental education. ~~*(3-18-99)*~~(7-1-06)T

d. A dentist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental practice performed during the biennial renewal ~~*year*~~ period up to a maximum of ~~*five*~~ ten (~~*5*~~10) credits. ~~*(4-6-05)*~~(7-1-06)T

e. Any person who becomes licensed as an active dentist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (7-1-06)T

02. Documentation. In conjunction with ~~*the annual*~~ license renewal, the dentist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental practice performed and certify that the minimum requirements were completed in the ~~*one (1) year*~~ biennial renewal period. ~~*(4-6-05)*~~(7-1-06)T

051. CONTINUING EDUCATION FOR DENTAL HYGIENISTS (RULE 51).
Effective April 1994, renewal of any active dental hygiene license or dental hygiene license endorsement will require evidence of completion of continuing education or volunteer dental hygiene practice that meets the following requirements. (4-6-05)

01. Requirements for Renewal of an Active Status Dental Hygiene License: (4-6-05)

a. All active dental hygienists must hold a current CPR card. (6-2-92)

b. All active dental hygienists shall acquire ~~*twelve*~~ twenty-four (~~*1*~~24) credits of continuing education in each biennial renewal ~~*year*~~ period. One (1) credit is defined as one (1) hour of instruction. ~~*(6-2-92)*~~(7-1-06)T

c. Continuing education must be oral health/health-related education for the professional development of a dental hygienist. The ~~*twelve*~~ twenty-four (~~*1*~~24) credits shall be obtained through continuing education courses, correspondence courses, college credit courses, viewing of videotape or listening to other media devoted to dental hygiene education. ~~*(3-18-99)*~~(7-1-06)T

d. A dental hygienist holding an active status license issued by the Board shall be allowed one (1) credit of continuing education for every two (2) hours of verified volunteer dental hygiene practice performed during the biennial renewal ~~*year*~~ period up to a maximum of ~~*five*~~ ten (~~*5*~~10) credits. ~~*(4-6-05)*~~(7-1-06)T

e. Any person who becomes licensed as an active dental hygienist during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of continuing education credits as specified by the Board. (7-1-06)T

02. Requirements for Renewal of an Extended Access Dental Hygiene License Endorsement. In addition to any other continuing education requirements for renewal of a dental hygiene license, a person granted an extended access dental hygiene license endorsement shall complete ~~*six*~~ twelve (~~*6*~~12) credits of continuing education in each biennial renewal ~~*year*~~ period in the specific practice areas of medical emergencies, local anesthesia, oral pathology, care and treatment of geriatric, medically compromised or disabled patients and treatment of children. Any person who is issued an extended access dental hygiene license endorsement during any biennial renewal period shall be required at the time of the next successive license renewal to report a prorated amount of those continuing education credits required under this section as specified by the Board. ~~*(4-6-05)*~~(7-1-06)T

03. Documentation. In conjunction with ~~*the annual*~~ license and endorsement renewal, the dental hygienist shall provide a list of continuing education credits obtained and verification of hours of volunteer dental hygiene practice performed and certify that the minimum requirements were completed in the ~~*one (1) year*~~ biennial renewal period. ~~*(4-6-05)*~~(7-1-06)T

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912(4), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Volume 06-10, at page 346.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no fiscal impact on the state general fund as the result of this administrative rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Effective as of August 1, 2006, the Idaho Board of Dentistry relocated to a new office space. The Administrative Rules of the Idaho Board of Dentistry must contain pertinent office information, including the Board of Dentistry's physical address. As such, Rule 5 of the Administrative Rules of the Board of Dentistry must be amended to remove the outdated office address and to include the Board of Dentistry's new office address.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P.O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone) / (208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. OFFICE INFORMATION (RULE 5).
The Board of Dentistry office is located at ~~*708 ½ W. Franklin Street*~~ 350 North 9th Street, Suite

M-100, Boise, Idaho. The mailing address is P.O. Box 83720, Boise, Idaho 83720-0021. The telephone number of the Board is (208) 334-2369, the fax number is (208) 334-3247.

~~(3-15-02)~~(_____)

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0603

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912(4), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Volume 06-10, pages 347 through 349.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year:

There is no fiscal impact on the state general fund as the result of this administrative rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an

agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

During the 2005 Idaho legislative session, statutes and rules were approved to authorize qualified dental hygienists to perform dental hygiene functions in extended access oral health care programs (typically, public and charitable dental programs). The Board of Dentistry now proposes to create and issue an extended access dental hygiene restorative license endorsement. The Board of Dentistry believes that persons treated in extended access oral health care programs would greatly benefit from efficiencies created by allowing qualified dental hygienists practicing under the direct supervision of a dentist to provide certain restorative treatment (placing fillings in a prepared tooth and carving, adjusting and contouring the fillings). At present, dental hygienists are not authorized to perform restorative treatment on a patient. In effect, a dentist could treat a greater number of patients in an extended access oral health care program if a dental hygienist could provide the restorative treatment (which now must be done by the dentist). To qualify for the restorative endorsement, an active status dental hygienist must successfully complete a specified clinical examination or hold an equivalent permit in another state. A qualified dental hygienist would have the extended access dental hygiene restorative endorsement placed on their existing dental hygiene license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted. Information regarding this proposed rulemaking was previously provided to interested parties.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P.O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

026. -- 02~~8~~7. (RESERVED).

028. VOLUNTEER DENTAL HYGIENE SERVICES (RULE 28).
A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances: ( )

01. Extended Access Oral Health Care Program. The dental hygiene services must be performed in an extended access oral health care program under the supervision of a dentist who is employed or retained by or is a volunteer for the program; ( )

02. Dental Hygiene Services Performed. The dental hygiene services performed shall be limited to oral health screening, preparation of health history, fluoride treatment, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventative agents, the application of pit and fissure sealants with recommendation that patient will be seen by a dentist and preventive dental health instruction; ( )

03. Volunteers. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and ( )

04. Volunteer Time Limit. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month. ( )

029. DENTAL HYGIENISTS - LICENSE ENDORSEMENTS (RULE 29).
Subject to the provisions of the Dental Practice Act, Chapter 9, Title 54, Idaho Code, and these rules, the Board may grant license endorsements to qualified dental hygienists as follows: (4-6-05)

01. Extended Access Dental Hygiene Endorsement. Upon application, the Board may grant an extended access dental hygiene endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met: (4-6-05)

a. The person has been licensed as a dental hygienist during the two (2) year period

immediately prior to the date of application for an extended access dental hygiene endorsement; (4-6-05)

b. For a minimum of one thousand (1000) total hours within the previous two (2) years, the person has either been employed as a dental hygienist in supervised clinical practice or has been engaged as a clinical practice educator in an approved dental hygiene school; (4-6-05)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under general supervision in an extended access oral health care program. (4-6-05)

~~*02*~~**d.** ~~***Extended Access Dental Hygiene Endorsement Exception***~~. Any person holding an unrestricted active status dental hygienist's license issued by the Board who is employed as a dental hygienist in an extended access oral health care program in this state shall be granted an extended access dental hygiene endorsement without being required to satisfy the experience requirements specified in this rule. ~~*(4-6-05)*~~(____)

~~*03. Volunteer Dental Hygiene Services. A person holding an unrestricted active status dental hygienist's license issued by the Board may provide dental hygiene services in an extended access oral health care program without being issued an extended access dental hygiene license endorsement under the following circumstances:* (4-6-05)~~

~~*a. The dental hygiene services must be performed in an extended access oral health care program under the supervision of a dentist who is employed or retained by or is a volunteer for the program;* (4-6-05)~~

~~*b. The dental hygiene services performed shall be limited to oral health screening, preparation of health history, fluoride treatment, non-surgical periodontal treatment, oral prophylaxis, the application of caries preventative agents, the application of pit and fissure sealants with recommendation that patient will be seen by a dentist and preventive dental health instruction;* (4-6-05)~~

~~*c. The dental hygienist must perform the dental hygiene services on a volunteer basis and shall not accept any form of remuneration for providing the services; and* (4-6-05)~~

~~*d. The dental hygienist may not provide dental hygiene services under this provision for more than five (5) days within any calendar month.* (4-6-05)~~

02. Extended Access Dental Hygiene Restorative Endorsement. Notwithstanding any other provision of these rules, a qualified dental hygienist holding an extended access dental hygiene restorative endorsement may perform specified restorative functions under the direct supervision of a dentist in an extended access oral health care program. Permissible restorative functions under this endorsement shall be limited to the placement of a restoration into a tooth prepared by a dentist and the carving, contouring and adjustment of the contacts and occlusion of the restoration. Upon application, the Board may grant an extended access dental hygiene restorative endorsement to a person holding an unrestricted active status dental hygienist's license issued by the Board who provides satisfactory proof that the following requirements are met:

(____)

a. The person has successfully completed the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board; or(____)

b. The person holds an equivalent restorative permit in another state as of the date of endorsement application which required successful completion of the Western Regional Examining Board's restorative examination or an equivalent restorative examination approved by the Board for its issuance; and (____)

c. The person has not been disciplined by the Board or another licensing authority upon grounds that bear a demonstrable relationship to the ability of the dental hygienist to safely and competently practice under in an extended access oral health care program. (____)

0~~4~~3. Renewal. Upon payment of the appropriate license fee and completion of required continuing education credits specified for a dental hygiene license endorsement, a person meeting all other requirements for renewal of a license to practice dental hygiene shall also be entitled to renewal of a dental hygiene license endorsement for the effective period of the license. An endorsement shall immediately expire and be cancelled at such time as a person no longer holds an unrestricted active status dental hygienist's license issued by the Board or upon a person's failure to complete the required continuing education credits. (7-1-06)T

IDAPA 19 - BOARD OF DENTISTRY

19.01.01 - RULES OF THE IDAHO STATE BOARD OF DENTISTRY

DOCKET NO. 19-0101-0604

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-912(4), Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Rule 040 of the Administrative Rules of the Board of Dentistry contains a number of subsections that identify behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. The Board of Dentistry proposes to amend existing Rule 040.18 to clarify the fact that unprofessional conduct not only includes the violation of a law governing dentistry but also includes the violation of any law pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry. The change being made to the pending rule resulted from comments received by the Board of Dentistry and is intended to make it clear that the unprofessional conduct specified in the rule is not inclusive.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 350 through 352.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the pending rule, contact Michael J. Sheeley, Executive Director, Idaho State Board of Dentistry, at (208) 334-2369.

DATED this 24th day of October, 2006.

BOARD OF DENTISTRY **Docket No. 19-0101-0604**
Rules of the Idaho State Board of Dentistry **PENDING RULE**

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Sections 67-5220(1) and 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized pursuant to Section 54-912(4), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking: Current Rule 40 of the Administrative Rules of the Board of Dentistry contains a number of subsections that identify behavior that constitutes unprofessional conduct on the part of a dentist or dental hygienist. A violation of any provision in Rule 40 may provide a basis for taking disciplinary action against a dental or dental hygiene license. The Board of Dentistry proposes to amend existing Rule 40.18 to clarify the fact that unprofessional conduct not only includes the violation of a law governing dentistry but also includes the violation of any law pertaining to or affecting a person's fitness to practice dentistry. For example, many criminal laws do not govern the practice of dentistry, but a conviction for criminal conduct may pertain to or affect a person's fitness to practice dentistry.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased. N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Michael J. Sheeley, Executive Director, Idaho Board of Dentistry, at (208) 334-2369.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 10th day of August, 2006.

Michael J. Sheeley, Executive Director
Idaho State Board of Dentistry
Jefferson Place Building
350 North 9th Street, Suite M-100
P. O. Box 83720, Boise, Idaho 83720-0021
(208) 334-2369 (telephone)
(208) 334-3247 (facsimile)

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

040. UNPROFESSIONAL CONDUCT (RULE 40).
A dentist or hygienist shall not engage in unprofessional conduct in the course of his practice. *The conduct specified in this rule shall not be construed as a complete list of unprofessional conduct, or as authorizing or permitting the performance of other or similar conduct, or as limiting or restricting the Board from holding that other or similar acts constitute unprofessional conduct.* Unprofessional conduct by a person licensed under the provisions of Title 54, Chapter 9, Idaho Code, is defined as, but not limited to, one (1) of the following: ~~(7-1-93)~~(____)

01. Fraud. Obtaining fees by fraud or misrepresentation, or over-treatment either directly or through an insurance carrier. (7-1-93)

02. Unlicensed Practice. Employing directly or indirectly any suspended or unlicensed dentist or dental hygienist to practice dentistry or dental hygiene as defined in Title 54, Chapter 9, Idaho Code. (7-1-93)

03. Unlawful Practice. Aiding or abetting licensed persons to practice dental hygiene or dentistry unlawfully. (7-1-93)

04. Dividing Fees. A dentist shall not divide a fee for dental services with another party, who is not a partner or associate with him in the practice of dentistry, unless: (7-1-93)

a. The patient consents to employment of the other party after a full disclosure that a division of fees will be made; (7-1-93)

b. The division is made in proportion to the services performed and responsibility assumed by each dentist or party. (7-1-93)

05. Controlled Substances. Prescribing or administering controlled substances not reasonably necessary for, or within the scope of, providing dental services for a patient. In prescribing or administering controlled substances, a dentist shall exercise reasonable and ordinary care and diligence and exert his best judgment in the treatment of his patient as dentists in good standing in the state of Idaho, in the same general line of practice, ordinarily exercised in like cases. A dentist may not prescribe controlled substances for or administer controlled substances to himself. A dentist shall not use controlled substances as an inducement to secure or

maintain dental patronage or aid in the maintenance of any person's drug addiction by selling, giving or prescribing controlled substances. (3-18-99)

06. Harassment. The use of threats or harassment to delay or obstruct any person in providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of Title 54, Chapter 9, Idaho Code, or the Board's Rules, or to aid in such compliance. (7-1-93)

07. Discipline in Other States. Conduct himself in such manner as results in a suspension, revocation or other disciplinary proceedings with respect to his license in another state. (3-18-99)

08. Altering Records. Alter a patient's record with intent to deceive. (7-1-93)

09. Office Conditions. Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession in the state of Idaho and current recommendations of the American Dental Association and the Centers for Disease Control as referred to in Section 004. (7-1-93)

10. Abandonment of Patients. Abandonment of patients by licensees before the completion of a phase of treatment, as such phase of treatment is contemplated by the customary practice and standards of the dental profession in the state of Idaho, without first advising the patient of such abandonment and of further treatment that is necessary. (7-1-93)

11. Use of Intoxicants. Practicing dentistry or dental hygiene while under the influence of an intoxicant or controlled substance where the same impairs the dentist's or hygienist's ability to practice dentistry or hygiene with reasonable and ordinary care. (7-1-93)

12. Mental or Physical Illness. Continued practice of dentistry or dental hygiene in the case of inability of the licensee to practice with reasonable and ordinary care by reason of one (1) or more of the following: (7-1-93)

a. Mental illness; (7-1-93)

b. Physical illness, including but not limited to, deterioration through the aging process, or loss of motor skill. (7-1-93)

13. Consent. Revealing personally identifiable facts, data or information obtained in a professional capacity without prior consent of the patient, except as authorized or required by law. (3-18-99)

14. Scope of Practice. Practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities that the licensee knows or has reason to know that he or she is not competent to perform. (3-18-99)

15. Delegating Duties. Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows, or with the exercise of reasonable care and

control should know, that such a person is not qualified by training or by licensure to perform them. (3-18-99)

16. Unauthorized Treatment. Performing professional services that have not been authorized by the patient or his legal representative. (3-18-99)

17. Supervision. Failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of a licensed professional. (7-1-93)

18. Legal Compliance. Failure to comply with any provisions of federal, state or local laws, statutes, rules, and regulations governing or affecting the practice of dentistry. ~~(3-18-99)~~(____)

19. Exploiting Patients. Exercising undue influence on a patient in such manner as to exploit a patient for the financial or personal gain of a practitioner or of a third party. (7-1-93)

20. Misrepresentation. Willful misrepresentation of the benefits or effectiveness of dental services. (7-1-93)

21. Disclosure. Failure to advise patients or their representatives in understandable terms of the treatment to be rendered, alternatives, and disclosure of reasonably anticipated fees relative to the treatment proposed. (3-18-99)

22. Sexual Misconduct. Making suggestive, sexual or improper advances toward a patient or committing any lewd or lascivious act upon or with a patient. (7-1-93)

23. Patient Management. Use of unreasonable and/or damaging force to manage patients, including but not limited to hitting, slapping or physical restraints. (7-1-93)

24. American Dental Association Compliance. Failure by a dentist to comply with the American Dental Association, Principles of Ethics, Code of Professional Conduct and Advisory Opinions (ADA Code), as incorporated by reference in this chapter. (3-20-04)

25. American Dental Hygienists' Association Compliance. Failure by a dental hygienist to comply with the American Dental Hygienists' Association, Code of Ethics for Dental Hygienists (ADHA Code), as incorporated by reference in this chapter. (4-6-05)

IDAPA 23 - BOARD OF NURSING

23.01.01 - RULES OF THE IDAHO BOARD OF NURSING

DOCKET NO. 23-0101-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 54-1404, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the September 6, 2006 Idaho Administrative Bulletin, Vol. 06-9, pages 114 through 145.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sandra Evans, Executive Director, (208) 334-3110.

DATED this 28th day of September 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 54-1404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than September 20, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

These rule changes update and clarify Board rules to assist with licensing and enforcement functions. The proposed rules clarify definitions and elaborate on various licensing procedures; they add failure to cooperate with authorities and engaging in a pattern of poor practice as grounds for discipline; revise the limited license provisions to spell out the categories and requirements and explain the summary suspension provisions; set forth a description of the peer review process required of the advanced practice nurses; establish titles for graduate APPNs; relocate, without change in amount, an existing records verification fee; and include some general updating and housekeeping provisions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Sandra Evans, Executive Director, (208) 334-3110.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before September 27, 2006.

DATED this 8th day of August, 2006.

Sandra Evans, MAEd., R.N.
Executive Director
Idaho Board of Nursing
280 N. 8th St., Ste. 210
P. O. Box 83720
Boise, Idaho 83720-0061
Phone: (208) 334-3110; Fax: (208) 334-3262

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.
This chapter is adopted in accordance with Section 54-1404(~~9~~10), Idaho Code. ~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

003. WRITTEN INTERPRETATIONS.
In accordance with Sections 54-1401 through 54-141~~7~~8, Idaho Code, this Board has written statements which pertain to the interpretation of the rules of this chapter, or to the documentation of compliance with the rules of this chapter. These documents are available for public inspection at the Board office. ~~(3-30-01)~~(____)

004. ADMINISTRATIVE APPEALS
The Idaho Rules of Administrative Procedure of the Attorney General on contested cases, IDAPA 04.11.01, "Idaho Rules of Administrative Procedure," Section 100, et seq., shall apply in addition to Board of Nursing Rules, IDAPA 23.01.01, "Rules of the Idaho Board of Nursing~~,~~." ~~*Sections 090 through 164.*~~ ~~(7-1-93)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

~~34~~01. ~~Wrongful~~ Abandonment. The termination of a nurse/patient relationship without first making appropriate arrangements for continuation of required nursing care~~ by others~~. The nurse/patient relationship begins when responsibility for nursing care of a patient is accepted by the nurse. Refusal to accept an employment assignment or refusal to accept or begin a nurse/patient relationship is not ~~wrongful~~ abandonment. Reasonable notification, or a timely request for alternative care for a patient, directed to an attending physician or to a staff supervisor, prior to leaving the assignment, ~~is sufficient to permit~~ constitutes termination of the nurse/patient relationship. ~~(5-3-03)~~(____)

0~~1~~2. Accreditation. The official authorization or status granted by a recognized accrediting entity or agency other than a state board of nursing. (7-1-93)

0~~2~~3. Administration of Medications. The process whereby a prescribed medication is given to a patient by one (1) of several routes. Administration of medication is a complex nursing responsibility which requires a knowledge of anatomy, physiology, pathophysiology and pharmacology. Licensed nurses may administer medications and treatments as prescribed by health care providers authorized to prescribe medications. (5-3-03)

0~~3~~4. Approval. The process by which the Board evaluates and grants official recognition to education programs that meet standards established by the Board. (5-3-03)

0~~4~~5. Assist. To aid or help in the accomplishment of a prescribed set of actions. (7-1-93)

0~~5~~6. Assistance With Medications. The process whereby a non-licensed care provider is delegated tasks by a licensed nurse to aid a patient who cannot independently self-administer medications. (5-3-03)

0~~6~~7. Board. The Idaho Board of Nursing. (7-1-93)

0~~7~~8. Board Staff. The Executive Director and other such personnel as are needed to implement the Nursing Practice Act and these Rules. (7-1-93)

0~~8~~9. Charge Nurse. A licensed nurse who bears primary responsibility for assessing, planning, prioritizing and evaluating care for the patients on a unit, as well as the overall supervision of the licensed and unlicensed staff delivering the nursing care. (5-3-03)

~~09~~10. Clinical Preceptor. A licensed professional nurse who acts to facilitate student training in a manner prescribed by a written agreement between the preceptor's employer and an educational institution. (5-3-03)

1~~0~~1. Competence. Safely performing those functions within the role of the licensee in a manner that demonstrates essential knowledge, judgment and skills. (5-3-03)

1~~1~~2. Curriculum. The systematic arrangement of learning experiences including didactic courses, practical experiences, and other activities needed to meet the requirements of the nursing program and of the certificate or degree conferred by the parent institution. (5-3-03)

1~~2~~3. Delegation. The process by which a licensed nurse assigns tasks to be performed by others. (5-3-03)

1~~3~~4. Disability. Any physical, mental, or emotional condition that interferes with the nurse's ability to practice nursing safely and competently. (5-3-03)

1~~4~~5. Emeritus License. A license issued to a nurse who desires to retire from active practice for any length of time. (5-3-03)

1~~5~~6. Licensing Examination. A licensing examination that is acceptable to the board. (5-3-03)

1~~6~~7. License in Good Standing. A license not subject to current disciplinary action, restriction, probation or investigation in any jurisdiction. (5-3-03)

1~~7~~8. Limited License. A nursing license subject to specific restrictions, terms, and conditions. (5-3-03)

1~~8~~9. Nursing Assessment. The systematic collection of data related to the patient's health care needs. (5-3-03)

~~19~~20. **Nursing Diagnosis**. The clinical judgment or conclusion regarding patient/client/ family/ community response to actual or potential health problems made as a result of the nursing assessment. (7-1-93)

2~~0~~1. **Nursing Intervention**. An action deliberately selected and performed to support the plan of care. (5-3-03)

2~~1~~2. **Nursing Service Administrator**. A licensed professional nurse who has administrative responsibility for the nursing services provided in a health care setting. (7-1-93)

2~~2~~3. **Organized Program of Study**. A written plan of instruction to include course objectives and content, teaching strategies, provisions for supervised clinical practice, evaluation methods, length and hours of course, and faculty qualifications. (7-1-93)

2~~3~~4. **Patient**. An individual or a group of individuals who are the beneficiaries of nursing services in any setting and may include client, resident, family, community. (5-3-03)

2~~4~~5. **Patient Education**. The act of teaching patients and their families, for the purpose of improving or maintaining an individual's health status. (5-3-03)

2~~5~~6. **Plan of Care**. The goal-oriented strategy developed to assist individuals or groups to achieve optimal health potential. (5-3-03)

2~~6~~7. **Practice Standards**. General guidelines that identify roles and responsibilities for a particular category of licensure and, used in conjunction with the decision-making model, define a nurse's relationship with other care providers. (5-3-03)

2~~7~~8. **Probation**. A period of time set forth in an order in which certain restrictions, conditions or limitations are imposed on a licensee. (5-3-03)

2~~8~~9. **Protocols**. Written standards that define or specify performance expectations, objectives, and criteria. (5-3-03)

~~29~~30. **Revocation**. Termination of the authorization to practice. (5-3-03)

3~~0~~1. **Scope of Practice**. The extent of treatment, activity, influence, or range of actions permitted or authorized for licensed nurses based on the nurse's education, preparation, and experience. (5-3-03)

3~~1~~2. **Supervision**. Designating or prescribing a course of action, or giving procedural guidance, direction, and periodic evaluation. Direct supervision requires the supervisor to be physically present and immediately accessible to designate or prescribe a course of action or to give procedural guidance, direction, and periodic evaluation. (4-6-05)

3~~2~~3. **Suspension**. An order temporarily withdrawing a nurse's right to practice nursing. (5-3-03)

34. **Technician/Technologist**. These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants. (____)

3~~3~~5. **Universal Standards**. The recommendations published by the Center for Disease Control, Atlanta, Georgia, for preventing transmission of infectious disease, also referred to as "Standard Precautions." (5-3-03)

011. -- 039. (RESERVED).

040. TEMPORARY LICENSE.
A temporary license is a nonrenewable license ~~*of limited duration*~~. ~~*(5-3-03)*~~(____)

01. Issued at Discretion of Board. Temporary licenses are issued, and may be extended, at the discretion of the Board. ~~*(6-1-78)*~~(____)

02. Temporary Licensure by Interstate Endorsement. ~~*A license issued by interstate endorsement is a license issued by the board of this state, based on the fact of licensure in another state.*~~ A temporary license may be issued to an applicant for interstate endorsement on proof of current licensure in good standing in another state, satisfactory documentation of employment within the three (3) years immediately preceding application, and compliance with the requirements of Section 242 of these rules. ~~*(5-3-03)*~~(____)

03. Temporary Licensure by Examination. A temporary license to practice nursing until notification of examination results and completion of criminal background check may be issued to an applicant for Idaho licensure following graduation from a nursing education program recognized by the professional licensing board for nursing of any state or territory of the United States, and compliance with Section 221 of these rules. ~~*(5-3-03)*~~(____)

a. The practice of nursing by new graduates holding temporary licensure shall be limited as follows: (3-30-01)

i. Direct supervision by a licensed professional nurse must be provided. (3-30-01)

ii. May not act as charge nurse. (5-3-03)

b. ~~*Terms of*~~ Temporary licenses issued to examination candidates ~~*are as follows:*~~ will be issued for a period not to exceed three (3) months. ~~*(3-30-01)*~~(____)

~~*i. Temporary licenses will be issued for a period of no more than three (3) months; and*~~ ~~*(5-3-03)*~~

~~*ii. Temporary licenses are not renewable.*~~ ~~*(3-30-01)*~~

04. Unsuccessful Examination Candidates. (6-11-93)

a. An applicant who fails to pass the licensing examination shall not be eligible for further temporary licensure. (3-30-01)

b. In the event that such applicant subsequently passes the licensing examination after twelve (12) months or more have elapsed following completion of the educational program, a temporary license with conditions may be issued until verification of clinical competence is received. (3-30-01)

05. Applicants Not in Active Practice. A temporary license with specific terms and conditions may be issued to a person who has not actively engaged in the practice of nursing in any state for more than three (3) years immediately prior to the application for licensure or to an applicant whose completed application indicates the need for confirmation of the applicant's ability to practice safe nursing. (3-30-01)

06. Applicants from Other Countries. Upon final evaluation of the completed application, the Board may, at its discretion, issue a temporary license to a graduate from a nursing education program outside of the United States or its territories, pending notification of results of the licensing examination. (6-11-93)

07. Fee. The applicant must pay the temporary license fee, as prescribed in Subsection 901.07 of these rules. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

061. ~~*LATE RENEWAL OR*~~ LICENSE REINSTATEMENT~~*OF A LICENSE*~~.

01. ~~*Reinstatement*~~ Within One Year~~*(Late Renewal)*~~. A person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement within one (1) year by: ~~*(3-30-01)*~~(____)

a. Filing a completed renewal application; and (3-30-01)

b. Payment of the verification of records fee and the renewal fee as prescribed in Subsection 900.05 of these rules. (4-2-03)

02. ~~*Reinstatement*~~ After One Year. After one (1) year, but less than three (3) years, a person whose license has lapsed for failure to pay the renewal fee by the specified date may apply for reinstatement by: ~~*(3-30-01)*~~(____)

a. Filing a completed reinstatement application; and (3-30-01)

b. Payment of the ~~*verification of records*~~ fees ~~*and the renewal fee as*~~ prescribed in Subsection 900.0~~3~~5 of these rules; and ~~*(7-1-93)*~~(____)

c. Providing evidence satisfactory to the Board of the applicant's ability to practice safely and competently. (3-30-01)

d. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

03. ~~***Reinstatement***~~ **After Three Years**. After three (3) years, a person whose license has lapsed for failure to timely pay the renewal fee may apply for reinstatement by: ~~*(3-30-01)*~~( )

a. Filing a completed reinstatement application; and ~~*(3-30-01)*~~( )

b. Payment of the ~~*verification of records*~~ fees ~~*and the renewal fee as*~~ prescribed in Subsection 900.05 of these rules; and ~~*(4-2-03)*~~( )

c. Payment of the temporary license fee prescribed in Subsection 901.07 of these rules, if required; and (4-2-03)

d. Providing evidence, satisfactory to the Board, of the applicant's ability to practice safely and competently. ~~*(3-30-01)*~~( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

04. ~~***Reinstatement***~~ **After Discipline**. A person whose license has been subject to disciplinary action by the board may apply for reinstatement of the license to active and unrestricted status by: ~~*(4-2-03)*~~( )

a. Submitting a completed application for reinstatement; and (4-2-03)

b. Payment of ~~*a verification of records*~~ the fees~~*; and renewal fee as*~~ prescribed in Subsection 900.05 of these rules; and ~~*(4-2-03)*~~( )

c. Documenting compliance with any term and restrictions set forth in any order as a condition of reinstatement; and ~~*(4-2-03)*~~( )

d. Provid~~*e*~~ing ~~*proof*~~ evidence, satisfactory to the board, of the applicant's ~~*competency*~~ ability to practice safely and competently. ~~*(4-2-03)*~~( )

e. A current fingerprint-based criminal history check as set forth in Section 54-1401(3), Idaho Code. ( )

f. A person whose license has been revoked may not apply for reinstatement until two (2) years following the order of revocation. ( )

05. **Reinstatement of Emeritus License to Current Status**. A person who holds a current emeritus license in good standing may apply for reinstatement of the license to active and unrestricted status by: (4-2-03)

a. Submitting a completed application for reinstatement; and (4-2-03)

b. Payment of the ~~*verification of records*~~ fees ~~*and renewal fee as*~~ prescribed in Subsection 900.05 of these rules; and ~~*(4-2-03)*~~(____)

c. Providing ~~*proof*~~ evidence, satisfactory to the board, of the applicant's current competency to practice. ~~*(4-2-03)*~~(____)

062. -- 075. (RESERVED).

076. PERSONS EXEMPTED BY BOARD.
Licensure to practice nursing shall not be required, nor shall the practice of nursing be prohibited for persons exempted by the Board including: (11-28-84)

01. Technicians and Technologists. Technicians and technologists who ~~*are enrolled in Board-recognized programs of training or who are registered or certified by Board-recognized appropriate national bodies and are employed in state licensed or certified health care facilities, performing within the ordinary and customary roles in their field*~~ comply with Section 491 of these rules. ~~*(6-1-78)*~~(____)

02. Non-Resident Nurses. Non-resident nurses currently licensed in good standing in another state or territory, who are in Idaho on a temporary basis because of enrollment in or presentation of a short term course of instruction recognized or approved by the Board and who are performing functions incident to formal instruction.
~~*(3-30-01)*~~(____)

03. Family Members and Others. (7-1-93)

a. Family members providing care to a person to whom they are related by blood, marriage, adoption, legal guardianship or licensed foster care. (5-21-89)

b. Non-family members who provide gratuitous care to a person on a temporary basis in order to give respite to family members who regularly provide care to that person. (5-21-89)

c. Live-in domestics, housekeepers and companions, provided they do not represent themselves as nor receive compensation as licensed nurses or other nursing care providers and so long as any health care provided is incidental to the services for which they are employed.
(3-30-01)

04. Nurse Apprentice. A nurse apprentice is a currently enrolled nursing student who is employed for remuneration in a non-licensed capacity by a Board approved health care agency.
(3-30-01)

a. Applicants for nurse apprentice shall: (3-30-01)

i. Be enrolled in an accredited/approved nursing education program that is substantially equivalent to Idaho's approved programs for practical/professional nursing.
(6-20-92)

ii. Be in good academic standing at the time of application and notify the Board of

any change in academic standing. (6-20-92)

iii. Meet the employing agency's health care skills validation requirements. (3-30-01)

iv. Satisfactorily complete a basic nursing fundamentals course. (3-30-01)

v. Use obvious designations that identify the applicant as a nurse apprentice. (3-30-01)

b. A completed application for nurse apprentice shall consist of: (3-30-01)

i. Completed application form provided by the Board, to include a fee of ten dollars ($10); and (7-1-93)

ii. Verification of satisfactory completion of a basic nursing fundamentals course; and (3-30-01)

iii. Validation of successful demonstration of skills from a nursing education program; and (3-30-01)

iv. Verification of on-going good academic standing in nursing education program. (3-30-01)

c. An individual whose application is approved shall be issued a letter identifying the individual as a nurse apprentice for a designated time period. (3-30-01)

d. A nurse apprentice may, under licensed professional nurse supervision, perform all functions approved by the Board of Nursing for unlicensed assistive personnel as set forth in ~~*Subsection 400.04*~~ Section 490 of these rules. ~~*(3-30-01)*~~(____)

05. Employer Application. (3-30-01)

a. A completed application for health care agencies wishing to employ nurse apprentices shall consist of: (3-30-01)

i. Completed application form provided by the Board; and (6-20-92)

ii. Job descriptions for apprentice; and (3-30-01)

iii. A written plan for orientation and skill validation; and (6-20-92)

iv. The name of the licensed professional nurse who shall be accountable and responsible for the coordination or management of the nurse apprentice program; and (3-30-01)

v. Assurance that a licensed professional nurse is readily available when nurse apprentice is working. (3-30-01)

vi. A written procedure for the nurse apprentice who is asked to perform a task that

could jeopardize a patient and who declines to perform the task; and (3-30-01)

vii. A fee of one hundred dollars ($100). (3-30-01)

b. Following application review, the Board may grant approval to a health care agency to employ nurse apprentice for a period of up to one (1) year. (3-30-01)

c. To insure continuing compliance with Board requirements, each approved agency shall submit an annual report to the Board on forms provided by the Board. Based on their findings, the Board may grant continuing approval annually for an additional one (1) year period. (6-20-92)

d. At any time, if the employing agency fails to inform the Board of changes in conditions upon which approval was based or otherwise fails to comply with established requirements, the Board may notify the agency of withdrawal of approval. (6-20-92)

077. MULTISTATE LICENSURE.

01. Definitions. In Section 077, the following terms have the meanings indicated. (3-15-02)

a. Board means the regulatory body responsible for issuing nurse licenses. (3-15-02)

b. Compact means the Nurse Multistate Licensing Compact. (3-15-02)

c. Coordinated Licensure Information System (CLIS) means an integrated process for collecting, storing, and sharing information on nurse licensing and enforcement activities related to nurse licensing laws, which is administered by a nonprofit organization composed of and controlled by state nurse licensing boards. (3-15-02)

d. Home state means the party state that is the nurse's primary state of residence. (3-15-02)

e. Party state means a state that is a signatory on the compact. (3-15-02)

f. Primary state of residence means the state of an individual's declared, fixed, and permanent residence. (3-15-02)

g. Public means an individual or entity other than designated staff or representatives of party state boards or the National Council of State Boards of Nursing, Inc. (3-15-02)

02. Examination. No applicant may be issued a compact license granting a multistate privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX (National Council Licensure Examination) examination: (4-6-05)

a. NCLEX-RN for professional nursing; or (4-6-05)

b. NCLEX-PN for practical nursing. (4-6-05)

03. Issuance of License in Compact Party State. (3-15-02)

a. A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. This evidence shall include a declaration signed by the licensee. Further evidence that may be requested includes, but is not limited to: (3-15-02)

i. Driver's license with a home address; (3-15-02)

ii. Voter registration card displaying a home address; or (3-15-02)

iii. Federal income tax return declaring the primary state of residence. (3-15-02)

b. A nurse changing primary state of residence, from one (1) party state to another party state, may continue to practice under the former home state license and multistate licensure privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed thirty (30) days. (3-15-02)

c. The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance, and the thirty (30) day period in Subsection 077.0~~2~~3.b. of these rules shall be stayed until resolution of the pending investigation. ~~(3-15-02)~~(____)

d. The former home state license is not valid upon the issuance of a new home state license. (3-15-02)

e. If a decision is made by the new home state denying licensure, the new home state shall notify the former home state within ten (10) business days, and the former home state will take action in accordance with that state's laws and regulations. (3-15-02)

04. Multistate Licensure Privilege Limitations. (3-15-02)

a. Home state boards shall include, in all disciplinary orders or agreements that limit practice or require monitoring, the requirement that the licensee subject to the order or agreement shall limit the licensee's practice to the home state during pendancy of the disciplinary order or agreement. (3-15-02)

b. The requirement referred to in Subsection 077.0~~3~~4.a. of these rules may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and other party state boards. ~~(3-15-02)~~(____)

05. Information System. (3-15-02)

a. Levels of Access. (3-15-02)

i. Public access to nurse licensure information shall be limited to: (3-15-02)

(1) The licensee's name; (3-15-02)

(2) Jurisdictions of licensure; (3-15-02)

(3) Licensure expiration date; (3-15-02)

(4) Licensure classification and status; (3-15-02)

(5) Public emergency, summary, and final disciplinary actions, as defined by contributing state authority; and (3-15-02)

(6) The status of multistate licensure privileges. (3-15-02)

ii. Non-party state boards shall have access to all CLIS data except current significant investigative information and other information as limited by contributing party state authority. (3-15-02)

iii. Party state boards shall have access to all CLIS data contributed by the party states and other information as allowed by contributing non-party state authority. (3-15-02)

b. Right to Review. (3-15-02)

i. The licensee may request, in writing, to the home state board to review data relating to the licensee in the CLIS. (3-15-02)

ii. If a licensee asserts that any data relating to the licensee is inaccurate, the burden of proof is on the licensee to provide evidence substantiating that claim. (3-15-02)

iii. Within ten (10) business days, the Board shall correct information that it finds to be inaccurate in the CLIS. (3-15-02)

c. Changes in Disciplinary Data. (3-15-02)

i. Within ten (10) business days, the Board shall report to CLIS: (3-15-02)

(1) Disciplinary action, agreement or order requiring participation in alternative programs or which limit practice or require monitoring unless the agreement or order relating to participation in alternative programs is required to remain nonpublic by the contributing state authority; (3-15-02)

(2) Dismissal of the complaint; and (3-15-02)

(3) Changes in status of disciplinary action, or licensure encumbrance. (3-15-02)

ii. The Board shall delete current significant investigative information from the CLIS within ten (10) business days after: (3-15-02)

(1) A disciplinary action; (3-15-02)

(2) An agreement or order requiring participation in alternative programs; (3-15-02)

(3) An agreement or agreements, which limit practice or require monitoring; or (3-15-02)

(4) Dismissal of a complaint. (3-15-02)

iii. The CLIS administrator shall make changes to licensure information in the CLIS within ten (10) business days upon notification by a board. (3-15-02)

078. -- 089. (RESERVED).

090. DENIAL OF LICENSE.

01. Grounds for Denial of License. (3-15-02)

a. Failure to meet any requirement or standard established by law or by rules adopted by the Board; or (3-15-02)

b. Failure to pass the licensing examination; or (3-15-02)

c. False representation of facts on an application for licensure; or (3-15-02)

d. Having another person appear in his place for the licensing examination; or (3-15-02)

e. Engaging in any conduct which would be grounds for discipline under Nursing Practice Act, Section 54-1413 (1), Idaho Code or Sections 100 or 101, of these rules. (3-15-02)

f. Revocation, suspension, limitation, reprimand, voluntary surrender or any other disciplinary action or proceeding, including investigation against a license, certificate or privilege to practice by another state or jurisdiction. (3-15-02)

02. Notification of Denial. The Board of Nursing shall give any applicant whose application for licensure is denied written notice containing a statement: (3-15-02)

a. That the applicant has failed to qualify to be examined or licensed; and (6-1-78)

b. A description of the reason(s) for denial; and (3-15-02)

c. Directing the applicant's attention to his rights under Proceedings, Section 54-1413(~~2~~3)(a), Idaho Code. ~~(3-15-02)~~(____)

a. Reapplication for a license previously denied must include evidence, satisfactory to the Board, of rehabilitation, or elimination or cure of the conditions for denial. (3-15-02)

b. Evaluation of reapplication for a license denied under Section 54-1413, Idaho Code, shall include consideration of at least the following factors: (3-15-02)

i. The nature and severity of the act or omission which resulted in the denial of license; and (7-1-93)

ii. The conduct of the applicant subsequent to the denial of license; and (7-1-93)

iii. The lapse of time since denial of license; and (7-1-93)

iv. Compliance with any conditions the Board may have stipulated as a prerequisite for reapplication; and (7-1-93)

v. The degree of rehabilitation attained by the applicant as evidenced by statements sent directly to the Board from qualified people who have professional knowledge of the applicant; and (7-1-93)

vi. Personal interview by the Board, at its discretion. (3-15-02)

c. Reapplication files will remain open and active for a period of twelve (12) months from date of receipt. After expiration of the twelve (12) months, the file will be closed and any subsequent reapplication will require submission of a new application form and payment of required fees. (3-15-02)

091. -- 099. (RESERVED).

100. GROUNDS FOR DISCIPLINE.

01. False Statement. A false, fraudulent or forged statement or misrepresentation in procuring a license to practice nursing shall mean, but need not be limited to: (6-1-78)

a. Procuring or attempting to procure a license to practice nursing by filing forged or altered documents or credentials; or (3-15-02)

b. Falsifying, misrepresenting facts or failing to verify and accurately report any and all facts submitted on any application for licensure, examination, relicensure, or reinstatement of licensure by making timely and appropriate inquiry of all jurisdictions in which licensee has made application for, or obtained, licensure or certification or engaged in the practice of nursing; or (3-15-02)

c. Impersonating any applicant or acting as proxy for the applicant in any examination for nurse licensure. (6-1-78)

02. Conviction of a Felony. Conviction of, or entry of a withheld judgment or a plea of nolo contendre to, conduct constituting a felony. (3-15-02)

03. False or Assumed Name. Practicing nursing under a false or assumed name shall mean, but need not be limited to, carrying out licensed nursing functions while using other than the individual's given or legal name. (3-15-02)

04. Offense Involving Moral Turpitude. An offense involving moral turpitude shall mean, but need not be limited to, an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man. (6-1-78)

05. Gross Negligence or Recklessness. Gross negligence or recklessness in performing nursing functions shall mean, but need not be limited to, a substantial departure from established and customary standards of care which, under similar circumstances, would have been exercised by a licensed peer; an act or an omission where there is a legal duty to act or to refrain from acting that a reasonable and prudent practitioner of nursing under same or similar facts and circumstances would have done, would have refrained from doing or would have done in a different manner and which did or could have resulted in harm or injury to a patient/client. An exercise of so slight a degree of care as to justify the belief that there was a conscious or overt disregard or indifference for the health, safety, well-being, or welfare of the public shall be considered a substantial departure from the accepted standard of care. (6-1-78)

06. Habitual Use of Alcohol or Drugs. Habitual use of alcoholic beverages or narcotic, hypnotic, or hallucinogenic drugs shall mean, but need not be limited to, the use of such substances to the extent that the nurse's judgment, skills, or abilities to provide safe and competent nursing care are impaired; or that the individual is unable to care for himself or his property or his family members because of such use; or it is determined by a qualified person that the individual is in need of medical or psychiatric care, treatment or rehabilitation or counseling because of drug or alcohol use. (7-1-91)

07. Physical or Mental Unfitness. Physical or mental unfitness to practice nursing shall mean, but need not be limited to, a court order adjudging that a licensee is mentally incompetent, or an evaluation by a qualified professional person indicating that the licensee is mentally or physically incapable of engaging in professional or practical nursing in a manner consistent with sound patient care; or uncorrected physical defect that precludes the safe performance of nursing functions. (6-1-78)

08. Violations of Standards of Conduct. Violations of standards of conduct and practice adopted by the Board shall mean, but need not be limited to, any violation of those standards of conduct described in Section 101 of these rules. (3-15-02)

09. Conduct to Deceive, Defraud or Endanger. Conduct of a character likely to deceive, defraud, or endanger patients or the public shall include, but need not be limited to: (3-15-02)

a. Violating the standards of conduct and practice adopted by the Board. (3-15-02)

b. Being convicted of any crime or act substantially related to nursing practice and including but not limited to sex crimes, drug violations, acts of violence and child or adult abuse. (3-15-02)

10. Action Against a License. Action against a license shall mean entry of any order restricting, limiting, revoking or suspending or otherwise disciplining a license or privilege to practice nursing by any jurisdiction. A certified copy of an order entered in any jurisdiction shall

be prima facie evidence of the matters contained therein. (3-15-02)

11. Failure to Make Timely and Appropriate Inquiry. Failing to make timely and appropriate inquiry verifying licensure status in all jurisdictions in which the applicant has ever applied for licensure, certification or privilege to practice, including those jurisdictions in which the applicant is currently or was ever licensed, or in which applicant has practiced, prior to filing any application, verification or other statement regarding licensure status with the Board. (3-15-02)

12. Failure to Cooperate With Authorities. Failure to cooperate with authorities in the investigation of any alleged misconduct or interfering with a Board investigation by willful misrepresentation of facts, failure to provide information on request of the Board, or the use of threats or harassment against any patient or witness to prevent them from providing evidence. (____)

13. Patterns of Poor Practice. Repeatedly engaging in conduct that departs from the customary standards of care. (____)

101. STANDARDS OF CONDUCT.

01. Violations. Any violation of these Standards of Conduct shall be grounds for disciplinary action in accordance with Section 54-1413(1), Idaho Code, of the Idaho Nursing Practice Act and Section 090 or 100, of the Rules of the Board of Nursing. ~~*Actions based on the violation of any standard of conduct may include, but are not limited to, monitoring, issuance of letters of concern, caution or reprimand, and suspension or revocation of license.*~~ ~~*(3-15-02)*~~(____)

02. Classification. For purposes of convenience only, the standards of conduct are grouped generally into one (1) of three (3) categories: license, practice, and professional responsibility. The fact that any particular standard is so classified in any particular category will not be relevant for any purpose other than ease of use. (3-15-02)

03. License. (3-15-02)

a. Period of Practice. The nurse shall practice professional or practical nursing in Idaho only with a current Idaho license or during the period of valid temporary licensure or as otherwise allowed by law. (3-15-02)

b. Aiding in Violation of Law. The nurse shall not aid, abet, or assist any other person to violate or circumvent laws or rules pertaining to the conduct and practice of nursing. (11-28-84)

c. Reporting Grossly Negligent or Reckless Practice. The nurse shall report to the Board of Nursing any licensed nurse who is grossly negligent or reckless in performing nursing functions or who otherwise violates the Nursing Practice Act or the Board of Nursing's Rules. (7-1-93)

d. Unlawful Use of License. The nurse shall not permit his license to be used by

another person for any purpose or permit unlicensed persons under his jurisdiction or supervision to indicate in any way that they are licensed to perform functions restricted to licensed persons. . (7-1-93)

e. Impairment of Ability. The nurse shall not practice nursing while the ability to practice is impaired by alcohol or drugs or physical, mental or emotional disability. (11-28-84)

04. Practice. (3-15-02)

a. Perform Acts. The nurse shall have knowledge of the statutes and rules governing nursing and shall function within the defined legal scope of nursing practice. The nurse shall not assume any duty or responsibility within the practice of nursing without adequate training or where competency has not been maintained. (3-15-02)

b. Delegating Activities to Others. The nurse shall delegate activities only to persons who are competent and qualified to undertake and perform the delegated activities and shall not delegate to non-licensed persons functions that are to be performed only by licensed nurses, to the detriment of patient safety. (11-28-84)

c. Supervision. The nurse delegating functions shall supervise the persons to whom the functions have been assigned or delegated. (11-28-84)

d. Safeguarding Patient. The nurse shall act to safeguard the patient from the incompetent practice, verbal or physical abusive acts or illegal practice of any person. (7-1-93)

e. Prescription Drugs. The nurse shall not obtain, possess, furnish or administer prescription drugs to any person, including self, except as directed by a person authorized by law to prescribe drugs. (11-28-84)

f. Leaving Assignment. The nurse shall not abandon patients in need of nursing care in a negligent or wanton manner. The nurse shall leave a nursing assignment only after properly reporting and notifying appropriate personnel and shall transfer responsibilities to appropriate personnel or care giver when continued care is required by the patient's condition. (7-1-91)

g. Respecting Patient's Privacy. The nurse shall respect the patient's privacy. (7-1-91)

h. Confidentiality. The nurse shall not disseminate information about the patient to individuals not entitled to such information except where such information is required by law or for the protection of the patient. (7-1-91)

i. Observe and Report. The nurse shall observe the condition and signs and symptoms of a patient, record the information, and report to appropriate persons any significant changes. (7-1-91)

j. Collaboration. The nurse shall function as a member of the health team and shall collaborate with other health team members as necessary to meet the patient's health needs. (7-1-91)

k. Universal Standards. The nurse shall adhere to universal standards and carry out principles of asepsis and infection control and shall not place the patient, the patient's family or the nurse's coworkers at risk for the transmission of infectious diseases. (3-15-02)

05. Professional Responsibility. (3-15-02)

a. Disclosing Contents of Licensing Examination. The nurse shall not disclose contents of any licensing examination, or solicit, accept, or compile information regarding the contents of any examination before, during, or after its administration. (11-28-84)

b. Considerations in Providing Care. In providing nursing care, the nurse shall respect and consider the individual's human dignity, health problems, personal attributes, national origin, and handicaps and shall not discriminate on the basis of age, sex, race, religion, economic or social status or sexual preferences in the rendering of nursing services. (11-28-84)

c. Responsibility and Accountability Assumed. The nurse shall be responsible and accountable for his nursing judgments, actions and competence. (7-1-93)

d. Witnessing Wastage of Controlled Substances Medication. Controlled substances may not be wasted without witnesses. The nurse shall not sign any record as a witness attesting to the wastage of controlled substance medications unless the wastage was personally witnessed. The nurse shall not solicit the signatures on any record of a person as a witness to the wastage of controlled substance when that person did not witness the wastage. The nurse shall solicit signatures of individuals who witnessed the wastage in a timely manner. ~~(3-15-02)~~(____)

e. Record-keeping. The nurse shall make or keep accurate, intelligible entries into records required by law, employment or customary practice of nursing, and shall not falsify, destroy, alter or knowingly make incorrect or unintelligible entries into patients' records or employer or employee records. (11-28-84)

f. Diverting or Soliciting. The nurse shall respect the property of the patient and employer and shall not take or divert equipment, materials, property, or drugs without prior consent or authorization, nor shall the nurse solicit or borrow money, materials or property from patients. (3-15-02)

g. Exploit, Solicit, or Receive Fees. The nurse shall not exploit the patient or the patient's family for personal or financial gain or offer, give, solicit, or receive any fee or other consideration for the referral of a patient or client. (3-15-02)

h. Professionalism. The nurse must not abuse the patient's trust. The nurse shall respect the dignity of the profession and maintain appropriate professional boundaries with respect to patients, the patients' families, and the nurse's coworkers. The nurse will not engage in violent, threatening or abusive behavior towards patients, patients' families or the nurse's coworkers. The nurse must be aware of the potential imbalance of power in professional relationships with patients, based on their need for care, assistance, guidance, and support, and ensure that all aspects of that relationship focus exclusively upon the needs of the patient. (3-15-02)

(BREAK IN CONTINUITY OF SECTIONS)

132. LIMITED LICENSES.
Limited licenses may be issued to qualified individuals in four (4) categories: post-discipline, non-practicing status, restricted status, and impairment-related disability. Failure to comply with the terms and conditions of a limited license will be cause for ~~*immediate discipline, including*~~ summary suspension ~~*or revocation of licensure*~~. ~~*(3-15-02)*~~(____)

01. ~~***Reinstatement After***~~ **Following Disciplinary Action**. ~~*(3-15-02)*~~(____)

a. After evaluation of an application for licensure reinstatement, the Board may issue a limited license to a nurse whose license has been revoked. (3-15-02)

b. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. (3-15-02)

02. Non-Practicing Status. (3-15-02)

a. Individuals who are prevented from engaging in the active practice of nursing may be issued a limited license. (3-15-02)

b. The Board shall specify that the license being issued does not entitle the licensee to engage in the active practice of nursing. The non-practicing status shall be noted on the license. (3-15-02)

c. The non-practicing limitation may be removed by the Board following receipt and evaluation of evidence satisfactory to the Board confirming that the licensee's physical or mental health status no longer prevents the individual from engaging in the active practice of nursing. (3-15-02)

03. Restricted Status. (3-15-02)

a. Individuals whose disabilities restrict or inhibit their ability to provide a full range of nursing services may be issued a limited license. (3-15-02)

b. In order to determine the appropriate limitations, the Board may evaluate statements from qualified professional persons who have personal knowledge of the applicant or licensee. The Board may also evaluate job descriptions and statements from potential employers and consider input from the applicant for the limited license. (3-15-02)

c. The Board shall specify the conditions of issuance of the limited license in writing. The conditions may be stated on the license. The conditions may include, but are not limited to: (3-15-02)

i. Notifying the Board of changes in employment status. (3-15-02)

ii. Submission of regular reports by the employer or by such other entities or individuals as the Board may desire. (3-15-02)

iii. Meeting with Board representatives. (3-15-02)

iv. Specific parameters of practice, excluding the performance of specific nursing functions. (3-15-02)

d. The conditions of limited practice may be removed by the Board following receipt and evaluation of satisfactory evidence confirming that the health status of the licensee no longer restricts or inhibits the person's ability to provide a full range of nursing services. (3-15-02)

04. Disability Due to Alcohol or Drug Use or Emotional or Mental Impairment. (3-15-02)

a. Individuals disabled due to alcohol or drug use or to emotional or mental impairment may qualify for issuance of a limited license as an alternative to discipline. (3-15-02)

b. The executive director may issue a limited license for a period not to exceed five (5) years to an individual who voluntarily surrenders his license by reason of a disability relating to alcohol or drug use or relating to emotional or mental impairment and who: (3-15-02)

i. Holds a current ~~*Idaho*~~ license to practice in Idaho as a professional or practical nurse or is otherwise eligible and is in the process of applying for licensure; and ~~*(3-15-02)*~~(____)

ii. Abused drugs and/or alcohol or demonstrated mental disability such that ability to safely practice is/may be impaired; and (3-15-02)

iii. Sign a written statement admitting to all facts which may constitute grounds for disciplinary action or demonstrate impairment of the safe practice of nursing, and waiving the right to a hearing and all other rights to due process in a contested case under the Idaho Administrative Procedures Act and the Nursing Practice Act; and (3-15-02)

iv. Submit reliable evidence, satisfactory to the executive director, that he is competent to safely practice nursing. (3-15-02)

c. If required, the applicant shall satisfactorily complete a ~~*Board approved*~~ treatment program accepted by the Board. ~~*(3-15-02)*~~(____)

d. The applicant must agree to participation in the Board's monitoring program to include: (3-15-02)

i. Evaluation of disability; (5-21-89)

ii. Approval of treatment program regimen; (5-21-89)

iii. Monitoring of progress; (5-21-89)

iv. Determination of when return to the workplace will be allowed. (7-1-96)

e. Admission to the Program for Recovering Nurses and/or issuance of a limited license may be denied for any reason including, but not limited to the following: (3-15-02)

i. The applicant diverted controlled substances for other than self administration; or (3-15-02)

ii. The applicant creates too great a safety risk; or (3-15-02)

iii. The applicant has been terminated from this, or any other, alternative program for non-compliance. (3-15-02)

f. ~~*In the event an applicant is determined to be ineligible for a limited license, the executive director shall refer the applicant's surrendered license to the Board for action.*~~ Upon satisfactory compliance with all of the terms of the limited license, and provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered. ~~*(3-15-02)*~~(____)

~~**g**~~**05. Compliance Required**. Limited licensure shall be conditioned upon the individual's prompt and faithful compliance with the following: ~~*(3-15-02)*~~(____)

~~*i*~~**a.** Satisfactory progress in any required continuing treatment or rehabilitation program. (3-15-02)

~~*ii*~~**b.** Regular and prompt notification to the Board of changes in name and address of self or any employer. (7-1-96)

~~*iii*~~**c.** Obtaining of performance evaluations prepared by the employer to be submitted at specified intervals and at any time upon request. (7-1-96)

~~*iv*~~**d.** Continuing participation in, and compliance with all recommendations and requirements of, the approved treatment or rehabilitation program, and obtaining of reports of progress submitted by the person directing the treatment or rehabilitation program at specified intervals and at any time upon request. (7-1-96)

~~*v*~~**e.** Submission of written self-evaluations and personal progress reports at specified intervals and at any time upon request. (7-1-93)

~~*vi*~~**f.** Submission of reports of supervised random alcohol/drug screens at specified intervals and at any time upon request. Participant is responsible for reporting as directed, submitting a sufficient quantity of sample to be tested, and payment for the screening. (7-1-96)

~~*vii*~~**g.** Meeting with the Board's professional staff at any time upon request. (7-1-93)

~~*viii*~~**h.** Working only in approved practice settings. (7-1-96)

~~ix~~**i.** Authorization by licensee of the release of applicable records pertaining to assessment, diagnostic evaluation, treatment recommendations, treatment and progress, performance evaluations, counseling, random chemical screens, and after-care at periodic intervals as requested. (7-1-93)

~~x~~**j.** Obedience to all laws pertaining to nursing practice, all nursing standards, and all standards, policies and procedures of licensee's employer(s) relating to any of the admitted misconduct or facts as set out in the written statement signed by licensee, or relating to the providing of safe, competent or proper nursing service. (7-1-93)

~~xi~~**k.** Compliance with other specific terms and conditions as may be required by the executive director. (3-15-02)

06. Summary Suspension - Lack of Compliance. ( )

~~h~~**a.** Summary Suspension. Any failure to comply with the terms and conditions of a limited license ~~*issued based upon an admission of misconduct or facts evidencing impairment of the licensee's ability to safely practice nursing by reason of drug, alcohol or other disability,*~~ shall be deemed to be an immediate threat to the health, safety, and welfare of the public and the executive director shall, upon receiving evidence of any such failure, ~~*immediately withdraw*~~ summarily suspend the limited license~~ *and refer to the advisory committee for re-evaluation*~~. ~~*(3-15-02)*~~( )

i. ~~*Termination*~~ Summary suspension of a limited license may occur if, during participation in the program, information is received which, after investigation, indicates the individual may have violated a provision of the law or Board Rules governing the practice of nursing. ~~*(3-15-02)*~~( )

ii. Upon ~~*termination*~~ summary suspension of a limited license, the executive director shall provide prompt written notice to the licensee stating the reason for the ~~*termination*~~ suspension, setting forth the evidence relied upon and notifying the licensee of his right to a hearing upon request at the earliest possible date in accordance with Section 54-1413(~~2~~3)(a)~~ *and (b)*~~, Idaho Code. ~~*(3-15-02)*~~( )

~~ii~~**b.** Right to Hearing. An individual whose limited license has been ~~*terminated*~~ summarily suspended by the executive director may request a hearing regarding the ~~*termination*~~ suspension by certified letter addressed to the Board. If the individual fails to ~~*so*~~ request a hearing within twenty (20) days after notice of ~~*termination*~~ suspension by the executive director, or ~~*if upon*~~ after hearing~~ *a determination is made that is unfavorable to him*~~, if one is requested, the Board shall enter ~~*its*~~ an order ~~*confirming termination*~~ affirming or rejecting summary suspension of the limited license and enter such further orders revoking, ~~*or*~~ suspending, or otherwise disciplining the ~~*surrendered*~~ nursing license as may be necessary. ~~*(3-15-02)*~~( )

~~j~~**c.** Other Orders. The Board may, for good cause, stay any order of the executive director or may modify the terms and conditions of a limited license as deemed appropriate to regulate, monitor or supervise the practice of any licensee. ~~*(3-15-02)*~~( )

~~*k. Upon satisfactory compliance with all of the terms of the limited license, and*~~

~~provided that the licensee demonstrates that he is qualified and competent to practice nursing, the executive director shall reinstate the renewable nursing license voluntarily surrendered.~~ ~~(3-15-02)~~

(BREAK IN CONTINUITY OF SECTIONS)

135. -- 1~~49~~64. (RESERVED).

~~**150. PLACE OF HEARING.**~~
~~Hearings shall be held at the Idaho State Board of Nursing offices, Boise, Idaho or such other place as the Board shall designate.~~ ~~(7-1-93)~~

~~**151. BOARD ACTION ON HEARING.**~~

~~**01. Evidence Presented**. Based upon evidence presented at the hearing, the Board may:~~ ~~(7-1-93)~~

~~**a.** Dismiss the complaint.~~ ~~(11-28-84)~~

~~**b.** Reprimand the licensee.~~ ~~(11-28-84)~~

~~**c.** Deny licensure.~~ ~~(11-28-84)~~

~~**d.** Deny renewal or reinstatement of a license.~~ ~~(11-28-84)~~

~~**e.** Suspend the license.~~ ~~(11-28-84)~~

~~**f.** Revoke the license.~~ ~~(11-28-84)~~

~~**g.** Enter an order of suspension or revocation but stay the order subject to probation for a designated period.~~ ~~(11-28-84)~~

~~**h.** Limit or restrict the license.~~ ~~(7-1-93)~~

~~**i.** Such other action as may be deemed appropriate.~~ ~~(7-1-93)~~

~~**152. -- 163. (RESERVED).**~~

~~**164. PROBATION.**~~

~~**01. Stay of Suspension or Revocation Order**. An order for suspension or revocation may be stayed for a designated period to be fixed by the Board. The Board shall determine such terms and conditions as deemed appropriate to regulate, monitor or supervise the practice of the licensee during the probation.~~ ~~(7-1-93)~~

~~***02. Board Decision**. Prior to expiration of the probation period, the Board may review and evaluate the licensee's file and reports and may take action to reinstate the license. At any time that the terms or conditions of probation are violated or that progress and performance are unsatisfactory, the Board may summarily take action to extend the period of probation or to invoke the order of suspension or revocation. (11-28-84)*~~

165. PETITION FOR REHEARING OR RECONSIDERATION.

01. Petition for Rehearing or Reconsideration. An individual may petition for reconsideration of any final order or rehearing based upon the following grounds: (7-1-93)

a. Newly discovered or newly available evidence relevant to the issue; (11-28-84)

b. Error in the proceeding or Board decision that would be grounds for reversal or judicial review of the order; (11-28-84)

c. Need for further consideration of the issues and the evidence in the public interest; or (11-28-84)

d. A showing that issues not considered ought to be examined in order to properly dispose of the matter. (11-28-84)

02. ~~***Action on Petition***~~ **Administrative Procedure**. ~~*The Board may deny the petition, order a rehearing or direct such other proceedings as deemed appropriate.*~~ The Administrative Procedures Act, Title 67, Chapter 52, Idaho Code, shall govern proceedings on petitions for reconsideration. ~~*(11-28-84)*~~(____)

~~***03. Limitation of Hearing**. The hearing shall be confined to those grounds upon which reconsideration or rehearing was ordered. (11-28-84)*~~

~~***04. Board Action**. Based upon evidence submitted for rehearing or reconsideration, the Board may reaffirm, stay, withdraw, reverse, modify or amend the prior order. (11-28-84)*~~

(BREAK IN CONTINUITY OF SECTIONS)

222. EXAMINATION AND RE-EXAMINATION.

01. Applicants for Professional or Practical Nurse Licensure. Applicants must successfully take the National Council Licensure Examination (NCLEX) for professional nurse licensure or for practical nurse licensure, as applied for and approved. ~~*(6-11-93)*~~(____)

02. Passing Score. The passing ~~*score for each examination series or form*~~ standard will be ~~*determined*~~ that established by the ~~*Board*~~ examining entity. ~~*(6-1-78)*~~(____)

03. Retaking Examination. Candidates who do not pass an examination will be

notified of the procedure for applying to retake. (6-11-93)

04. **Equivalent Exams**. In lieu of the NCLEX, the Board may accept documentation that the applicant has taken and successfully passed the State Board Test Pool examination.(____)

223. -- 239. (RESERVED).

240. QUALIFICATIONS FOR LICENSURE BY ENDORSEMENT.
An applicant for Idaho licensure by interstate endorsement must: (7-1-93)

01. Graduation Required. Be a graduate of a state approved/accredited practical or professional nursing education program that is substantially equivalent to Idaho's board-approved practical or professional nursing education program. Applicants for practical nurse licensure may also qualify under the provisions of Section 241 of these rules. (7-1-93)

02. Minimum Requirements. Have qualifications that are substantially equivalent to Idaho's minimum requirements; and (7-1-91)

03. Licensing Examination. Have taken the same licensing examination as that administered in Idaho and achieved scores established as passing for that examination by the Board, unless the applicant was licensed by examination prior to 1950; and (6-11-93)

04. **Current Practice Experience**. Have actively practiced nursing at least eighty (80) hours within the preceding three (3) years. (____)

0~~4~~5. License from Another State or Territory. Hold a license in good standing from another state or territory of the United States. The license of any applicant subject to official investigation or disciplinary proceedings shall not be considered in good standing. (7-1-91)

241. ~~PRACTICAL NURSE~~ LICENSURE BY EQUIVALENCY AND ENDORSEMENT LICENSURE.

01. **Application by Equivalency**. An applicant for practical nurse licensure by interstate endorsement based on equivalency must meet the following requirements: ~~(11-28-84)~~(____)

~~01~~a. Licensing Examination. Have successfully taken the same licensing examination as that administered in Idaho; and (7-1-93)

~~02~~b. License from Another State or Territory. Hold a license in another state or territory based on successful completion of nursing and related courses at an approved school preparing persons for licensure as registered nurses to include a course(s) in personal and vocational relationships of the practical nurse (or equivalent experience) and additional courses equivalent to those same courses included in a practical nursing program approved by the board, and provide evidence thereof. ~~(7-1-93)~~(____)

02. **Applicants Licensed in Another State or Territory**. Graduates of schools of nursing located outside the United States or its territories who are licensed in a state or territory

who meet the requirements of Subsections 240.02 through 240.05 of these rules may be processed as applicants for licensure by endorsement from another state. (____)

24203. **Application for Licensure by Endorsement**. A completed application for licensure by interstate endorsement must include all of the following: (7-1-93)

01a. Application Form. Completed, notarized application form provided by the Board; and (6-1-78)

02b. Verification. Verification and documentation of licensure status from state of applicant's original licensure; and (3-15-02)

03c. Employment Reference. One (1) satisfactory nursing employment reference from the three (3) year period immediately preceding the application; and (3-15-02)

04d. Census Questionnaire. Completed Census Questionnaire; and (6-1-78)

05e. Fee. Payment of all required fees. (3-15-02)

06f. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

24*3*2. -- 259. (RESERVED).

260. QUALIFICATIONS FOR LICENSURE OF GRADUATES OF SCHOOLS OF NURSING LOCATED OUTSIDE THE UNITED STATES OR ITS TERRITORIES.
A graduate from a nursing education program outside of the United States or its territories must: (3-30-01)

01. *Examination* **Qualifications**. *Pass examination(s), approved by the Board, which* Demonstrate nursing knowledge and written and spoken English proficiency. *(4-6-05)*(____)

02. Education Credentials. Have education qualifications that are substantially equivalent to Idaho's minimum requirements at the time of application. (3-30-01)

03. License. Hold a license or other indication of authorization to practice in good standing, issued by a government entity or agency from a country outside the United States or its territories. *(3-30-01)*(____)

04. Examination/Re-Examination. Take and achieve a passing score on the licensing examination required in Subsection 26*3*22.01 *and achieve the score determined as passing for that examination by the Board* of these rules. *(3-30-01)*(____)

***05. Applicants Licensed in Another State or Territory**. Graduates of schools of nursing located outside the United States or its territories who are licensed in a state or territory who meet the requirements of Section 240 may be processed as applicants for licensure by endorsement from another state. (3-30-01)*

(BREAK IN CONTINUITY OF SECTIONS)

~~262. (RESERVED).~~

~~263. EXAMINATION AND RE-EXAMINATION OF GRADUATES OF FOREIGN SCHOOLS OF NURSING.~~

~~01. Applicants for Professional Nurse or Practical Nurse Licensure. Applicants must successfully take the approved examination for professional nurse licensure or for practical nurse licensure, as applied for and approved. (6-11-93)~~

~~02. Examination Written Previously. Graduates of schools of nursing located outside the United States or its territories, who have successfully taken the State Board Test Pool Examination or the National Council Licensure Examination, may be processed as applicants for licensure by endorsement from another state in the United States. (3-30-01)~~

26~~4~~2. -- 270. (RESERVED).

271. DEFINITIONS RELATED TO ADVANCED PRACTICE PROFESSIONAL NURSING.

01. Accountability. Means being answerable for one's own actions. (7-1-99)

02. Advanced Practice Professional Nurse. Means a professional nurse licensed in this state who has gained additional specialized knowledge, skills and experience through a post-basic program of study as defined herein and is authorized to perform advanced nursing practice, which may include acts of diagnosis and treatment, and the prescribing, administering and dispensing of therapeutic pharmacologic and non-pharmacologic agents, as defined herein. Advanced practice professional nurses shall include certified nurse-midwives, clinical nurse specialists, nurse practitioners, and registered nurse anesthetists. Advanced practice professional nurses, when functioning within the recognized scope of practice, assume primary responsibility for the care of their patients. This practice incorporates the use of professional judgment in the assessment and management of wellness and conditions appropriate to the advanced practice professional nurse's area of specialization. (7-1-99)

03. Authorized Advanced Practice Professional Nurse. Means an advanced practice professional nurse authorized by the board to prescribe and dispense pharmacologic and non-pharmacologic agents pursuant to Section 315. (7-1-99)

04. Certification. Means recognition of the applicant's advanced knowledge, skills and abilities in a defined area of nursing practice by a national organization recognized by the board. The certification process measures the theoretical and clinical content denoted in the advanced scope of practice, and is developed in accordance with generally accepted standards of validation and reliability. (7-1-99)

05. Certified Nurse-Midwife. Means a licensed professional nurse who has graduated from a nationally accredited nurse-midwifery program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse-midwife from a national organization recognized by the board. (7-1-99)

06. Clinical Nurse Specialist. Means a licensed professional nurse who has graduated from a nationally accredited graduate program in nursing with a clinical focus, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a clinical nurse specialist from a national organization recognized by the board. (7-1-99)

07. Collaboration. Means the cooperative working relationship with another health care provider, each contributing his respective expertise in the provision of patient care, and such collaborative practice includes the discussion of patient treatment and cooperation in the management and delivery of health care. (7-1-99)

08. Consultation. Means conferring with another health care provider for the purpose of obtaining information or advice. (7-1-99)

09. Diagnosis. Means identification of actual or potential health problems and the need for intervention based on analysis of data collected. Diagnosis depends upon the synthesis of information obtained during the interview, physical exam, or diagnostic tests. (7-1-99)

10. Intervention. Means measures to promote health, protect against disease, treat illness in its earliest stages, manage acute and chronic illness, and treat disability. Interventions may include, but are not limited to ordering diagnostic studies, performing direct nursing care, prescribing pharmacologic or non-pharmacologic or other therapies and consultation with or referral to other health care providers. (7-1-99)

11. Nurse Practitioner. Means a licensed professional nurse who has graduated from a nationally accredited nurse practitioner program, passed a qualifying examination recognized by the board, and has current initial certification or current recertification as a nurse practitioner from a national organization recognized by the board. (7-1-99)

12. Peer Review Process. The systematic process by which one assesses, monitors, and makes judgments about the quality of care provided to patients by other peers measured against established practice standards. Peer review: ( )

a. Measures on-going practice competency of the advance practice professional nurse (APPN); ( )

b. Is performed by a licensed APPN, Physician, PA, or other professional certified by a recognized credentialing organization; and ( )

c. Focuses on a mutual desire for quality of care and professional growth incorporating attitudes of mutual trust and motivation. ( )

1~~2~~3. Prescriptive and Dispensing Authorization. Means the legal permission to

prescribe, deliver, distribute and dispense pharmacologic and non-pharmacologic agents to a client in compliance with board rules and applicable federal and state laws. Pharmacologic agents include legend and Schedule II through V controlled substances. (7-1-99)

1~~3~~4. **Referral**. Means directing a client to a physician or other health professional or resource. (7-1-99)

1~~4~~5. **Registered Nurse Anesthetist**. Means a licensed professional nurse who has graduated from a nationally accredited nurse anesthesia program, passed a qualifying examination recognized by the board and has current initial certification or current recertification as a nurse anesthetist from a national organization recognized by the board. (7-1-99)

1~~5~~6. **Scope of Practice of Advanced Practice Professional Nurse**. Means those activities that the advanced practice professional nurse may perform. Those activities shall be defined by the board according to the advanced practice professional nurse's education, preparation, experience and the parameters set forth by the advanced practice professional nurse's recognized, national certifying organization. (7-1-99)

1~~6~~7. **Specialization**. Means focusing the advanced practice professional nurse's clinical area of practice, including but not limited to, family health, mental health, child health, gerontological health, adult health or other. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

290. APPLICATION FOR LICENSURE -- ADVANCED PRACTICE PROFESSIONAL NURSE.
The advanced practice professional nurse requesting licensure to practice as a certified nurse-midwife, clinical nurse specialist, nurse practitioner or registered nurse anesthetist must submit an application to the board which includes: (7-1-99)

01. **Application Form**. Completed, notarized application form provided by the board. (7-1-99)

02. **Official Transcript**. Official transcript from the advanced practice nursing education program verifying successful completion. (7-1-99)

03. **National Certification**. Verification of current national certification from the board-recognized certifying agent; and (7-1-99)

04. **Enrollment in Continuing Competency Assessment Program**. In addition to verification of national certification, a certified nurse-midwife must submit proof of enrollment in the continuing competency assessment program of the American College of Nurse-Midwives which bears a current expiration date. At the end of five (5) years, the certified nurse-midwife must submit evidence of completion of the continuing competency requirement of the program. (7-1-99)

05. Fee. ~~*A non-refundable*~~ The fee ~~*of ninety dollars ($90)*~~ prescribed in Subsection 901.02 of these rules. ~~*(7-1-99)*~~( )

06. Criminal Background Check. A current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

291. -- 294. (RESERVED).

295. TEMPORARY LICENSURE -- ADVANCED PRACTICE PROFESSIONAL NURSE.
A temporary license to engage in advanced practice professional nursing as a certified nurse-midwife, clinical nurse specialist, nurse practitioner, or registered nurse anesthetist may be issued to the following: (7-1-99)

01. Applicants Awaiting Initial Certification Examination Results. An otherwise qualified applicant who is eligible to take the first available certification examination following completion of an approved advanced practice professional nurse education program. Verification of registration to write a board-recognized national certification examination must be received from the national certifying organization. (7-1-99)

a. Temporary licensure to practice shall be deemed to expire upon failure of the certification examination. An applicant who fails the national certification exam shall not engage in advanced practice professional nursing until such time as all requirements are met. (7-1-99)

b. An applicant who is granted a temporary license to practice as an advanced practice professional nurse must submit notarized results of the certification examination within ten (10) days of receipt. Failure to submit required documentation shall result in the immediate expiration of the temporary license. (7-1-99)

c. The temporary license of an applicant who does not write the examination on the date scheduled shall immediately expire and the applicant shall not engage in advanced practice professional nursing until such time as all requirements are met. (7-1-99)

02. Applicants Whose Certification Has Lapsed. A licensed professional nurse applying for re-entry into advanced professional nursing practice, who is required by the national certifying organization to meet certain specified practice requirements under supervision. The length of and conditions for temporary licensure shall be determined by the board. (7-1-99)

03. Applicants Holding a Temporary Professional Nursing License. An advanced practice professional nurse currently authorized to practice advanced practice professional nursing in another state upon issuance of a temporary license to practice as a professional nurse, and upon evidence of current initial certification or recertification as an advanced practice professional nurse from a board-recognized national certifying organization. (7-1-99)

04. Applicants Without Required Practice Hours. An advanced practice professional nurse who has not practiced the minimum required period of time during the renewal period may be issued a temporary license in order to acquire the required number of hours and

demonstrate ability to safely practice. (7-1-99)

05. **Application Processing**. An APPN whose application has been received but is not yet complete may be issued a temporary license. (____)

0~~5~~6. ***~~Expiration~~*** **Term of Temporary License**. ~~*The*~~ A temporary license expires ~~*when the*~~ at the conclusion of the term for which it is issued, or the issuance of a renewable ~~*advanced practice professional nurse*~~ license ~~*is granted*~~, whichever occurs earlier. ~~*(7-1-99)*~~(____)

296. -- 299. (RESERVED).

300. RENEWAL AND REINSTATEMENT OF ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.
The advanced practice professional nurse license may be renewed every two (2) years as prescribed in the Section 54-1411, Idaho Code, provided that the advanced practice professional nurse: (7-1-99)

01. **Current Professional License**. Maintains a current professional nurse license, or privilege, to practice in Idaho. (3-15-02)

02. **Evidence of Certification**. Submits evidence of current certification by a national organization recognized by the Board; and (7-1-99)

03. **Evidence of Continuing Education**. Provides documentation of thirty (30) contact hours of continuing education during the renewal period. Continuing education completed may be that required for renewal of national certification if documentation is submitted confirming the certifying organization's requirement is for at least thirty (30) contact hours. These contact hours may include the requirements identified in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 315.02.b. in a two (2) year period. (7-1-99)

04. **Hours of Practice**. Attests, on forms provided by the board, to a minimum of two hundred (200) hours of advanced professional nursing practice within the preceding two (2) year period. (7-1-99)

05. **Fee**. ~~*Remits a non-refundable renewal*~~ Pays the fee ~~*of fifty dollars ($50)*~~ prescribed in Subsection 900.05 of these rules. ~~*(7-1-99)*~~(____)

06. **Criminal Background Check**. Submits a current fingerprint based criminal history check as set forth in Section 54-1401(3), Idaho Code. (4-6-05)

07. **Peer Review Process**. Provides evidence, satisfactory to the board, of completion of a peer review process acceptable to the board. Applies to: (4-6-05)

a. CNM, Certified Nurse Midwife; (4-6-05)

b. CNS, Clinical Nurse Specialist; and (4-6-05)

c. NP, Nurse Practitioner. (4-6-05)

08. Exemption From Requirements. Nurse practitioners not certified by a national organization recognized by the board and approved prior to July 1, 1998 shall be exempt from the requirement set forth in IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 300.02. (7-1-99)

(BREAK IN CONTINUITY OF SECTIONS)

~~***306. DISCIPLINARY ENFORCEMENT.***~~
~~*The board may revoke, suspend or otherwise discipline the advanced practice professional nurse license of a licensee who fails to comply with current recognized scope and standards of practice, who fails to maintain national certification or competency requirements, or who violates the provisions of the Nursing Practice Act or rules of the board.* (7-1-99)~~

~~***307. -- 309. (RESERVED).***~~

Section 310 is being renumbered to Subsection 390.02

3~~11~~07. -- 314. (RESERVED).

315. PRESCRIPTIVE AND DISPENSING AUTHORIZATION FOR ADVANCED PRACTICE PROFESSIONAL NURSES.

01. Initial Authorization. An application for the authority to prescribe and dispense pharmacologic and non-pharmacologic agents may be made as part of initial licensure application or by separate application at a later date. (7-1-99)

a. An advanced practice professional nurse who applies for authorization to prescribe pharmacologic and non-pharmacologic agents within the scope of practice for the advanced practice category, shall: (7-1-99)

i. Be currently licensed as an advanced practice professional nurse in Idaho; and (7-1-99)

ii. Provide evidence of completion of thirty (30) contact hours of post-basic education in pharmacotherapeutics obtained as part of study within a formal educational program or continuing education program, which are related to the applicant's advanced practice category scope of practice and include: (7-1-99)

(1) Pharmacokinetic principles and their clinical application; (7-1-99)

(2) The use of pharmacologic agents in the prevention of illness, restoration, and maintenance of health; (7-1-99)

(3) Federal and state laws relating to the purchasing, possessing, prescribing,

administering, and disposing of pharmacologic and nonpharmacologic agents; (7-1-99)

(4) Prescription writing; (7-1-99)

(5) Drug selection, dosage and route of administration; and (7-1-99)

(6) Drug interactions. (7-1-99)

iii. Submit a completed, notarized application form provided by the board; and (7-1-99)

iv. Remit ~~*a non-refundable*~~ fees ~~*of fifty dollars ($50)*~~ prescribed in Subsection 901.05 of these rules. ~~*(7-1-99)*~~( )

b. Exceptions to the pharmacotherapeutic education may be approved by the board. (7-1-99)

c. Prescriptions written by authorized advanced practice professional nurses shall comply with all applicable state and federal laws and be signed by the prescriber with the abbreviation for the applicable category of advanced nursing practice, the identification number assigned by the board and where applicable, the Idaho controlled substance registration number and the federal Drug Enforcement Agency registration number. (7-1-99)

d. Advanced practice professional nurse authorization shall expire and may be renewed at the same time as the advanced practice professional nurse license. (7-1-99)

02. Authorization Renewal. Authorization may be renewed provided the applicant: (7-1-99)

a. Maintains a valid advanced practice professional nurse license; (7-1-99)

b. Has completed ten (10) contact hours of approved pharmacology-related continuing education in the twenty-four (24) months immediately preceding application for renewal; and (7-1-99)

c. Has not engaged in any act or omission in the exercise of prescriptive authority which demonstrates a threat to the public. (7-1-99)

03. Temporary Authorization. The board may grant temporary prescriptive authority to an applicant who holds a temporary advanced practice professional nurse license and who meets the requirements for initial authorization pursuant to IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," Subsection 315.01. (7-1-99)

04. Expiration of Temporary Prescriptive Authorization. Temporary prescriptive authorization automatically expires on the expiration, revocation, suspension, placement on probation, or denial of any advanced practice professional nurse license. (7-1-99)

05. Dispensing Authorization. All authorized advanced practice professional nurses

may dispense pharmacologic and non-pharmacologic agents pursuant to applicable state and federal laws, subject to the following conditions: (7-1-99)

a. Valid Advanced Practice Professional Nurse/Patient Relationships. An advanced practice professional nurse shall not dispense pharmacologic agents except in the course of his professional practice and when a bona fide advanced practice professional nurse/patient relationship has been established. A valid relationship will exist when the advanced practice professional nurse has obtained sufficient knowledge of the patient's medical condition through examination and has assumed responsibility for the health care of the patient. (7-1-99)

b. Restrictions on the Dispensing of Controlled Substances. Dispensing of Schedule II controlled substances shall be limited to emergency periods to be determined on the basis of individual circumstances. The emergency period will extend only until the Schedule II prescription can be filled from a pharmacy. (7-1-99)

06. Accountability. The advanced practice professional nurse when exercising prescriptive and dispensing authority is accountable for: (7-1-99)

a. Patient selection; (7-1-99)

b. Problem identification through appropriate assessment; (7-1-99)

c. Medication and device selection; (7-1-99)

d. Patient education for use of therapeutics; (7-1-99)

e. Knowledge of interactions of therapeutics; (7-1-99)

f. Evaluation of outcome; and (7-1-99)

g. Recognition and management of complications and untoward reactions. (7-1-99)

316. GROUNDS FOR DISCIPLINE OF AN ADVANCED PRACTICE PROFESSIONAL NURSE LICENSE.
In addition to the grounds set forth in Section 54-1413, Idaho Code and IDAPA 23.01.01, "Rules of the Idaho Board of Nursing," subject to Section 100, an advanced practice professional nursing license may be suspended, revoked, placed upon probation, or other disciplinary sanctions imposed by the board on the following grounds: ~~(7-1-99)~~(____)

01. Prescribing or Dispensing Controlled Substances. Prescribing, dispensing, or selling any drug classified as a controlled substance to a family member or to himself. (7-1-99)

02. Violating Governing Law. Violating any state or federal law relating to controlled substances. (7-1-99)

03. Outside Scope of Practice. Prescribing or dispensing outside the scope of the advanced practice professional nurse's practice. (7-1-99)

04. Other Than Therapeutic Purposes. Prescribing or dispensing for other than therapeutic purposes. (7-1-99)

05. Violation of Nursing Practice Act or Board Rules. Violating the provisions of the Nursing Practice Act or the rules of the board. (7-1-99)

317. ~~WITHDRAWAL~~ SUMMARY SUSPENSION OF ADVANCED PRACTICE PROFESSIONAL NURSE PRESCRIPTIVE AUTHORIZATION.
Failure to maintain active licensure as an advanced practice professional nurse shall result in the ~~automatic withdrawal~~ summary suspension of prescriptive authorization. ~~(7-1-99)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

390. USE OF TITLES, ABBREVIATIONS, AND DESIGNATIONS FOR THE PRACTICE OF NURSING.

01. ~~Temporary License~~ Title for Graduates. ~~The~~ A new graduate issued a temporary license ~~pending notification of examination results~~ pursuant to Section 040 of these rules shall use the title graduate nurse, abbreviated G.N., or graduate practical nurse, abbreviated G.P.N., or graduate nurse midwife, abbreviated G.N.M., or graduate clinical nurse specialist, abbreviated G.C.N.S., or graduate nurse practitioner, abbreviated G.N.P., or graduate nurse anesthetist, abbreviated G.N.A., whichever is appropriate, until the renewable license is ~~granted~~ issued. ~~(5-21-79)~~(____)

~~**02. Temporary License for New Graduate**. A new graduate practicing on a temporary license must be provided direct supervision by a licensed professional nurse and may not assume charge responsibilities. (11-28-84)~~

~~**03. Failure to Pass Examination**. If the new graduate fails to pass the licensing examination, licensed nursing functions may not be carried out and the individual must use the title aide, nursing assistant, etc., as appropriate for auxiliary workers in the employment setting. (5-21-79)~~

~~310~~02. Titles. An individual who has successfully met all requirements for licensure as an advanced practice professional nurse shall have the right to use the title corresponding to the category of advanced nursing practice for which the individual is licensed. (7-1-99)

~~01~~a. Title of Certified Nurse-Midwife. Individuals who have successfully met all requirements for licensure as a certified nurse-midwife shall have the right to use the title certified nurse-midwife, abbreviated C.N.M. (7-1-99)

~~02~~b. Title of Clinical Nurse Specialist. Individuals who have successfully met all requirements for licensure as a clinical nurse specialist shall have the right to use the title clinical nurse specialist, abbreviated C.N.S. (7-1-99)

~~03~~**c.** Title of Nurse Practitioner. Individuals who have successfully met all requirements for licensure as a nurse practitioner shall have the right to use the title nurse practitioner, abbreviated N.P. (7-1-99)

~~04~~**d.** Title of Registered Nurse Anesthetist. Individuals who have successfully met all requirements for licensure as a registered nurse anesthetist shall have the right to use the title registered nurse anesthetist, abbreviated R.N.A. (7-1-99)

0~~4~~3. Registered Nurse Title. Individuals who have successfully met all requirements for licensure as professional nurses shall have the right to use the title Registered Nurse, abbreviated R.N. (5-21-79)

0~~5~~4. Licensed Practical Nurse Title. Individuals who have successfully met all requirements for licensure as practical nurses shall have the right to use the title Licensed Practical Nurse, abbreviated L.P.N. (5-21-79)

(BREAK IN CONTINUITY OF SECTIONS)

402. LICENSED PROFESSIONAL NURSE FUNCTIONING IN SPECIALITY AREAS. A licensed professional nurse may carry out functions beyond the basic educational preparation under certain conditions. (7-1-96)

01. Conditions for Licensed Professional Nurses Functioning in Specialty Practice Areas. A licensed professional nurse may carry out functions beyond the educational preparation described in Sections 600 through 68~~2~~1 of these rules when the nurse: ~~(5-3-03)~~( )

a. In addition to completion of the curriculum requirements of Sections 600 through 68~~2~~1 of these rules, has completed any specific education, training, and supervised practice as may be required in the Nursing Practice Act or rules; and ~~(5-3-03)~~( )

b. Conforms to recognized standards for practice of the specialty; and (5-3-03)

c. Follows written protocols approved by medical staff, nursing administration, and the employing agency administration. (5-3-03)

02. Recognized Specialty Practice Areas. Additional education, training, and practice: (5-3-03)

a. Flight/Transport Nurse. A flight/transport nurse is a licensed professional nurse who provides critical care services with a duly licensed transporting agency. (5-3-03)

i. Basic qualifications include at least two (2) years (four thousand (4,000) hours) of critical care nursing experience in the specialty area pertinent to the type of service being provided. (5-3-03)

ii. Licensed professional nurses who regularly provide care in the pre-hospital setting must maintain emergency medical technician credentialing. (5-3-03)

iii. Individual educational requirements commensurate with the specialty care being provided may include, but are not limited to: Neonatal Resuscitation Program ("NRP"), Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS), Trauma Nurse Core Curriculum (TNCC) or Flight Nurse Advanced Trauma Course (FNATC) and radio communications. (5-3-03)

iv. Flight nurses must also have course work in flight physiology, aircraft safety and survival. (5-3-03)

v. A flight/transport nurse must have received a minimum of forty (40) hours of supervised clinical experience before functioning independently. (5-3-03)

b. Surgical First Assistants. A surgical first assistant is a licensed professional nurse who, under direct supervision, assists the operating surgeon. (5-3-03)

i. Nurses acting as surgical first assistants may not concurrently serve as scrub or instrument nurses. (5-3-03)

ii. A licensed professional nurse first surgical assistant in cardiovascular surgery may harvest saphenous veins after completing additional educational instruction acceptable to the board and supervised practice under direct supervision of the operating physician. (5-3-03)

(BREAK IN CONTINUITY OF SECTIONS)

490. UNLICENSED ASSISTIVE PERSONNEL (UAP).
The term unlicensed assistive personnel, also referred to as "UAP", is used to designate unlicensed personnel employed to perform nursing care services under the direction and supervision of licensed nurses. The term unlicensed assistive personnel also includes licensed or credentialed health care workers whose job responsibilities extend to health care services beyond their usual and customary roles and which activities are provided under the direction and supervision of licensed nurses. (5-3-03)

01. Not a Substitute for the Licensed Nurse. Unlicensed assistive personnel may complement the licensed nurse in the performance of nursing functions, but may not substitute for the licensed nurse; unlicensed assistive personnel may not redelegate a delegated act. (5-3-03)

02. Delegation. The nursing care tasks that may be delegated to unlicensed assistive personnel shall be stated in writing in the practice setting. Decisions concerning delegation will be determined in accordance with the provisions of Section 400. (5-3-03)

03. Training. The following training requirements apply to all unlicensed assistive personnel. The training program shall: (5-3-03)

a. Include written objectives which describe the expected outcomes for the learner and which can be evaluated by written or oral examination and by clinical demonstration of competency or application; and (5-3-03)

b. Incorporate learning experiences appropriate to the stated objectives; and (5-3-03)

c. Be conducted by licensed professional nurses and other licensed health professionals, including, but not limited to, physicians, pharmacists, psychologists, social workers, and dieticians; and (5-3-03)

d. Include an evaluation mechanism to determine the effectiveness of the program; and (5-3-03)

e. Address the general unlicensed assistive personnel curriculum content areas set forth in Subsection 681.04.h. (5-3-03)

04. Nurse Aide Registry. In addition to the foregoing training requirements, UAP desiring placement on the Nurse Aide Registry must comply with the requirements set forth in Sections 600 through 681. (5-3-03)

05. Assistance with Medications. Where permitted by law, after completion of a Board-approved training program, unlicensed assistive personnel in care settings may assist patients who cannot independently self-administer medications, provided that: (5-3-03)

a. A plan of care has been developed by a licensed professional nurse; and (7-1-96)

b. The act has been delegated by a licensed nurse; and (7-1-96)

c. Written and oral instructions have been given to the unlicensed assistive personnel by a licensed nurse concerning the reason(s) for the medication, the dosage, expected effects, adverse reactions or side effects, and action to take in an emergency; and (7-1-96)

d. The medication is in the original pharmacy-dispensed container with proper label and directions or in an original over-the-counter container or the medication has been removed from the original container and placed in a unit container by a licensed nurse. Proper measuring devices must be available for liquid medication that is poured from a pharmacy-dispensed container. Inventories of narcotic medications must be maintained; and (7-1-96)

e. Any medication dosages not taken and the reasons thereof are recorded and reported to appropriate supervisory persons; and (5-3-03)

f. Assistance with medication may include: breaking a scored tablet, crushing a tablet, instilling eye, ear or nose drops, giving medication through a pre-mixed nebulizer inhaler or gastric (non nasogastric) tube, assisting with oral or topical medications and insertion of suppositories. (7-1-96)

06. Prohibitions and Limitations. Unlicensed assistive personnel are prohibited from

performing any licensed nurse functions that are specifically defined in Section 54-1402~~ (b)~~, Idaho Code. ~~(5-3-03)~~( )

a. Unlicensed assistive personnel may not be delegated procedures involving acts that require nursing assessment or diagnosis, establishment of a plan of care or teaching, the exercise of nursing judgment, or procedures requiring specialized nursing knowledge, skills or techniques. (5-3-03)

b. Examples of procedures that should not be delegated to unlicensed assistive personnel include, but are not limited to: (5-3-03)

i. Sterile procedures; and (5-3-03)

ii. Preparation or administration of injections; and (5-3-03)

iii. Start, stop or adjust any IV therapy; and (5-3-03)

iv. Oxygen adjustment without clear direction from a licensed nurse; and (5-3-03)

v. Nasogastric tube feedings or medication administration; and (5-3-03)

vi. Mixing or compounding medications; and (5-3-03)

vii. Prepare, apply or adjust intermittent positive-pressure breathing machines; and (5-3-03)

viii. Assisting with either preparation or administration of non-routine medications; and (5-3-03)

ix. Any act not consistent with Subsection 490.02. (5-3-03)

491. TECHNICIANS/TECHNOLOGISTS.
~~*These individuals are not credentialed by regulatory bodies in Idaho and may include, but are not limited to: surgical, dialysis and radiology technicians/technologists, monitor technicians and medical assistants.*~~ ~~(5-3-03)~~

01. Functions. Technicians/technologists may perform limited nursing functions within the ordinary, customary, and usual roles in their fields and are exempted from licensure by the Board of Nursing under Section 54-1412, Idaho Code, (Nursing Practice Act), provided they are: (5-3-03)

a. Enrolled in or have completed a formal training program acceptable to the board; or (5-3-03)

b. Registered with or certified by a national organization acceptable to the board. (5-3-03)

02. Supervision. Technicians/technologists providing basic nursing care services on

an organized nursing unit in an institutional setting must function under the supervision of a licensed professional nurse. ~~*A licensed professional nurse shall be responsible for the development of the job description, guidelines/protocols under which the technician/ technologist provides nursing care.*~~ ~~*(5-3-03)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

900. RENEWAL AND REINSTATEMENT FEES.
Fees will be assessed for renewal of licensure~~*, for late renewal*~~ or for reinstatement of a lapsed ~~*license*~~, ~~*or reinstatement of a*~~ disciplined, limited, or emeritus license. Any person submitting the renewal application and fee post-marked later than August 31 shall be considered delinquent and the license lapsed and therefore invalid: ~~*(4-2-03)*~~(____)

01. Licensed Professional Nurse Renewal Fee. Licensed professional nurses will be assessed a renewal fee of ninety dollars ($90) due by August 31 of each odd-numbered year; and (3-30-06)

02. Licensed Practical Nurse Renewal Fee. Licensed practical nurses will be assessed a renewal fee of ninety dollars ($90) due by August 31 of each even-numbered year; and (3-30-06)

03. Advanced Practice Professional Nurse. Licensed advanced practice professional nurses will be assessed a renewal fee of ninety dollars ($90) due by August 31 of each odd-numbered year; and (3-30-06)

04. Emeritus License. Emeritus status nurses will be assessed a renewal fee of twenty dollars ($20) due by August 31 of the renewal year. (4-2-03)

05. ~~*Late Renewal/*~~**Reinstatement Fee**. ~~*Advanced practice professional nurses, licensed professional nurses, licensed practical nurses, and emeritus status*~~ Nurses~~,~~ requesting ~~*a late renewal,*~~ reinstatement of a lapsed~~ *license*~~, ~~*or reinstatement of a*~~ disciplined, limited, or emeritus license, ~~*and*~~ or reinstatement of an emeritus license to active status~~ *nurses seeking reinstatement of a license to active practice*~~, will be assessed ~~*a fee of thirty-five dollars ($35) for*~~ the records verification and ~~*a fifty dollar ($50)*~~ renewal fees~~ *which will be due upon application*~~. ~~*(4-2-03)*~~(____)

06. Delay in Processing. Processing of renewal applications not accompanied by cash, cashier's check, a money order, or other guaranteed funds may be delayed in order to allow clearance of personal checks through the licensee's bank. (3-30-01)

901. LICENSURE FEES.
Fees will be assessed for licensure of professional and practical nurses by examination and endorsement, and for temporary licenses and verification of licensure to another state. (6-1-78)

01. Licensure by Examination. A fee will be assessed applicants for licensure by

examination as follows: (3-30-01)

a. Professional nurse applicants: ninety dollars ($90). (3-30-01)

b. Practical nurse applicants: seventy-five dollars ($75). (3-30-01)

02. Advanced Practice Professional Nurses. Advanced practice professional nurse applicants: ninety dollars ($90). (3-30-01)

03. Licensure by Endorsement. The fee assessed for licensure by endorsement of licensed professional and licensed practical nurses will be one hundred ten dollars ($110). (3-30-06)

04. Verification of Licensure Fee. Licensed professional and licensed practical nurses requesting verification of licensure to another state will be assessed a fee of thirty dollars ($30) which will be due upon request. (3-30-01)

05. Authorization Fee. Advance practice professional nurses will be assessed an authorization fee of fifty dollars ($50) which will be due upon application. (3-30-01)

06. Emeritus License Fee. Applicants requesting emeritus status will be assessed a fee of twenty-five dollars ($25), which will be due upon application. (4-2-03)

07. Temporary License Fee. Professional and practical nurses requesting a temporary license will be assessed a fee of twenty-five dollars ($25) which will be due upon application. (3-30-01)

08. Limited License Fee. Persons who are issued a limited license following disciplinary action or temporary voluntary surrender of a license will be assessed a fee of one hundred dollars ($100) which will be due upon issuance of the limited license. (3-30-01)

09. Records Verification Fee. Thirty-five dollars ($35). ( )

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.03.01 - RULES OF THE STATE BOARD OF CHIROPRACTIC PHYSICIANS

DOCKET NO. 24-0301-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-707, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 359 through 362.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 25th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-707, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update the version of reference guidelines for peer review standards.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., Ste 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

600. CHIROPRACTIC PEER REVIEW (RULE 600).

01. Purpose and Composition of Peer Review Committee. There is hereby established a Peer Review Committee, the members of which will function at the will of the Idaho State Board of Chiropractic Physicians. (7-1-98)

a. The purpose of the Peer Review Committee is to review those matters relative to the appropriateness, quality, utilization, and cost of chiropractic care in the state of Idaho.

(7-1-98)

b. The Committee will be comprised of a chairman and a minimum of five (5) members, all of whom will be appointed by the members of the Board, and all of whom will serve at the pleasure of the Board. They may be removed from the Committee by vote of the Board, at any time, without cause. (7-1-98)

c. The Board will appoint one (1) of its members to act as a liaison between the Board and the Committee. This liaison will serve at the pleasure of the Board and may be removed by the Board, at any time, without cause. (7-1-98)

02. Definitions. (7-1-98)

a. "Board" means the Idaho State Board of Chiropractic Physicians. (7-1-98)

b. "Patient" means an individual who has received treatment from an Idaho licensed chiropractor, or who has received treatment under the supervision or direction of an Idaho licensed chiropractor, which treatment is within the scope of practice for a chiropractor within the state of Idaho. (7-1-98)

c. "Peer Review" means an evaluation performed by members of the Committee, which review will include the appropriateness, quality, utilization, and cost of chiropractic services and ethical performance of chiropractic care. (7-1-98)

d. "Peer Review Committee Members" shall mean those individuals appointed by the Board to serve on the Peer Review Committee. (7-1-98)

e. "Individual Reviewers" means those individual members of the Committee who are designated by the chairman of the Committee to conduct a peer review evaluation of any particular matter. (7-1-98)

03. Committee Criteria. (7-1-98)

a. Requirements for Membership: To be considered for appointment to the Committee, an applicant shall: (7-1-98)

i. Hold a current Idaho license to practice chiropractic, which license is in good standing and which has never been the subject of a formal disciplinary action in any jurisdiction; (7-1-98)

ii. Be actively engaged in the practice of chiropractic for the past four (4) years, with the most recent two (2) of those years having been spent in Idaho. (7-1-98)

iii. Obtain such peer review training as may be required by the Board. (3-15-02)

b. Appointment Process: Each year the Board will notify all Idaho licensed chiropractors of the process and deadlines by which they may self-submit for membership on the Committee. (7-1-98)

i. The submissions will be maintained on file for one (1) year; after which time they will be discarded without notice to the applicants. (7-1-98)

ii. The Board will notify those individuals who are named to the Committee of their appointment. (7-1-98)

c. Limitations of Peer Review Committee Members. While serving on the Peer Review Committee, a member shall not: (7-1-98)

i. Solicit to do independent medical examinations and/or reviews for insurance companies, attorneys or other third parties; (7-1-98)

ii. Utilize any designation or other reference to Committee membership on any advertisement, including telephone book, office, letterhead, or any other place. (7-1-98)

d. Reimbursement: Committee members will be afforded expense reimbursement in accordance with state employee travel regulations upon Board approval. (7-1-98)

04. Standards. (7-1-98)

a. In conducting any review, the Committee will utilize the Guidelines for Chiropractic Quality Assurance and Practice Parameters, Proceedings of the Mercy Center Consensus Conference, and Procedural/Utilization Facts, Chiropractic/Physical Therapy Treatment Standards, a Reference Guide, ~~5~~6th Edition, Robert E. Olson, D.C. ~~(7-1-98)~~(____)

b. The reviewing chiropractors will be expected to utilize their own experience and other reference sources in ascertaining the reasonableness and appropriateness of care provided. (7-1-98)

05. Who May Utilize the Services of the Committee. A request for peer review may be submitted to the Committee by a patient, the patient's legal representative, an insurer or other third-party payor or health care provider, or the treating chiropractic physician. (7-1-98)

06. Form of Request. A request for peer review must be submitted to the Committee on forms available from the Board offices. (7-1-98)

07. Fees for Review. The following fees will be assessed: (7-1-98)

a. If review is requested by a patient: no charge. (7-1-98)

b. If review is requested by a treating physician, an insurer or third party provider: (7-1-98)

i. One hundred twenty-five dollars ($125) for a review of claims in the amount of one thousand dollars ($1,000) or less; (3-30-01)

ii. Two hundred fifty dollars ($250) for a review of claims in the amount of one

thousand one dollars ($1,001) or more and not exceeding three thousand dollars ($3,000); (3-30-01)

iii. Three hundred fifty dollars ($350) for a review of claims in the amount of three thousand one dollars ($3,001) or more; (3-30-01)

c. Payment for reviews by the insurer or third-party provider is required prior to implementation of any review process. (7-1-98)

08. Procedures for Review. (7-1-98)

a. All reviews will be blind reviews. The identity of the patient, treating physician, and any insurer or third-party payor for the services will be unknown to the individual reviewers. (7-1-98)

b. Peer review will be conducted only upon request. The opportunity for participation in the review will be made available to the non-requesting party or parties. With the exception of the treating chiropractic physician, there is no requirement of participation in the peer review process. (7-1-98)

c. Reviews will be conducted by three (3) individual reviewers, to be chosen from the membership of the Committee by the chairman. (7-1-98)

d. The individual reviewers will conduct their evaluation, reach an agreement as to the outcome, and report that outcome to the chairman. If any of the parties desire to appeal this decision, they may within sixty (60) days of the decision notify the chairman who will appoint one (1) new reviewer to conduct an evaluation and report the outcome to the chairman. There will be no further rights to appeal. Decisions of the individual reviewer will not be subject to challenge. (4-11-06)

e. The chairman will provide regular reports to the Board liaison. If it is the opinion of the reviewers that a licensed chiropractic physician has violated any of the laws and rules governing continued licensure, the Committee chairman will notify the Board liaison, immediately. The liaison will then refer the matter for further investigation and potential disciplinary action by the Board. (7-1-98)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.09.01 - RULES OF THE BOARD OF EXAMINERS OF NURSING HOME ADMINISTRATORS

DOCKET NO. 24-0901-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: The pending rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective April 24, 2006, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule and is also adopting this rule as a temporary rule. The action is authorized pursuant to Section(s) 54-1604, Idaho Code.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a concise explanatory statement of the reasons for adopting the pending rule.

Change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement to allow for qualified administrators to protect the public. The pending rule is being adopted as proposed. The original text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 379 and 380.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 31st day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is April 24, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Section(s) 54-1604, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be

scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: **The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:**

Change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1) b and c, Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

Change rule 300 to allow for masters level education to be considered in the experience portion of the rule pertaining to endorsement to allow for qualified administrators to protect the public.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233

(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

300. ENDORSEMENT (RULE 300).
Each applicant for licensure by endorsement shall be required to document compliance with each of the following requirements. (4-6-05)

01. A Valid License. Hold a valid and current nursing home administrator license issued in another state. (4-6-05)

02. Experience/Education. (4-24-06)T

a. ~~*Two*~~ One (~~2~~1) year~~s~~ of ~~*practice as a licensed nursing home*~~ experience as an administrator in training in another state~~.~~; or ~~*(4-6-05)*~~(4-24-06)T

b. A total of one (1) year of combined experience obtained in an administrator in training program and from practical experience as an administrator in another state; or(4-24-06)T

c. A master's degree in health administration related to long-term care from an accredited institution; or (4-24-06)T

d. A master's degree in health administration from an accredited institution and one (1) year management experience in long-term care. (4-24-06)T

03. Criminal History. Has not been found guilty or convicted or received a withheld judgment or suspended sentence for any felony or any crime involving moral turpitude or received discipline for a license offense in any state. (4-6-05)

04. National Examination. Has taken and successfully passed the NAB examination. (4-6-05)

05. State Examination. Has taken and successfully completed the state of Idaho examination. (4-6-05)

06. Affidavit. Has certified under oath to abide by the laws and rules governing the practice of nursing home administration in Idaho. (4-6-05)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.10.01 - RULES OF THE STATE BOARD OF OPTOMETRY

DOCKET NO. 24-1001-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-1509, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 381 through 385.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 25th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-1509, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: **The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:**

Revise examination requirements and length of work experience required for endorsement, revise continuing education to include observation and the use of excess hours, update the code of ethics, and revise the contents of prescriptions.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

275. ENDORSEMENT (RULE 275).

01. Endorsement. Any person who presents to the Board of Optometry a certified copy of a certificate or license of registration which he holds in good standing in another state or a foreign country, which state or foreign country has similar requirements for licensing or registration as is provided for new applicants in Idaho (including therapeutic privileges), may

apply to the Board for the issuance of a license to practice optometry in the state of Idaho. (4-5-00)

02. Conditions to be Granted a License. The right to be granted a license to practice optometry in Idaho is also subject to the following conditions set out below: (7-1-93)

a. The submission of a completed application meeting the requirements of Subsection 175.01 including the applicable fee. (4-5-00)

b. That the license or certificate of registration of the applicant shall not have been suspended or revoked by any state or country or subject to any pending or unresolved licensure action in any state or country. That the applicant must not have committed any act which would constitute a violation of the Optometry Act or Board Rules. (4-5-00)

c. ~~*That for those licensed in another state after January 1, 1986 the applicant has successfully passed the "Treatment and Management of Ocular Disease Examination" administered by the Association of Regulatory Boards of Optometry and completed and returned the state of Idaho law examination.*~~ For those licensed in another state ~~*before January 1, 1986*~~ the applicant must document to the Board for approval, the education, training, and examination for diagnostic and therapeutic privileges in the other state and return the state of Idaho law examination. ~~*(3-20-04)*~~(____)

d. That the applicant has been engaged in the practice of optometry continuously for ~~*not less than*~~ three (3) of the last ~~*five*~~ four (~~5~~4) years. ~~*(4-5-00)*~~(____)

276. -- 299. (RESERVED).

300. CONTINUING EDUCATION IN OPTOMETRY (RULE 300).

01. Hours Required, Advance Approval. Each optometrist licensed by the state of Idaho shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of twelve (12) full hours of post-graduate optometric education courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. In addition, all Council on Optometric Practitioners Education (COPE) approved courses would be approved for continuing education credit. If an optometrist attends or plans to attend a course of study or seminar which has not been approved in advance, he may petition the Board for approval of that educational course of study, setting forth a description of the course. The Board may, in its discretion, approve the course upon review of the material submitted either in advance or after completion of the course. (8-24-94)

02. Additional Hours Required to Use Therapeutic Pharmaceutical Agents. Each optometrist licensed by the state of Idaho to use therapeutic pharmaceutical agents shall attend in each twelve (12) month period preceding the renewal of a license to practice optometry in Idaho, a minimum of six (6) additional full hours of post-graduate optometric courses or meetings approved in advance by the Board of Optometry or post-graduate study sessions or seminars at an accredited school or college of optometry. This six (6) hours of continuing education must be in courses involving ocular pharmacology and/or advanced ocular disease and are in addition to the

twelve (12) hours of continuing education required under Subsection 300.01. (7-1-93)

03. Correspondence/Home Study Courses/Observation. The Board allows credit for correspondence courses, individual home study and observation that is germane to the practice of optometry. No more than six (6) hours of continuing education shall be permitted each year in correspondence courses or other continuing education obtained ~~through the mail or~~ from "home study" courses or observation. ~~(8-24-94)~~(____)

04. Waiver of Requirements. The Board of Optometry shall waive the continuing education requirement for the first license renewal after initial licensure. The Board of Optometry may, upon application, waive the requirements of this rule in cases involving illness, unusual circumstances interfering with the optometrist's ability to practice or inability to conform to the rules due to military duty. (3-15-02)

05. Renewal Application Form. Each licensed Idaho optometrist will be furnished a license renewal application form by the State Board of Optometry on which each optometrist shall attest on their annual license renewal application that they have satisfied the continuing education requirements. False attestation of satisfaction of the continuing education requirements on a renewal application shall subject the licensee to disciplinary action. (3-20-04)

06. Audit. The Board may conduct audits to confirm that the continuing education requirements have been met. In the event a licensee fails to provide the Board with acceptable documentation of the hours attested to on the renewal application, the license will not be renewed. (3-20-04)

07. Documentation of Attendance. It shall be necessary for each licensed Idaho optometrist to provide documentation verifying attendance or completion of continuing education by securing authorized signatures or other documentation from the course instructors, providers, or sponsoring institution substantiating any hours attended by the licensee. This documentation must be maintained by the licensee and provided upon request by the Board or its agent. (3-20-04)

08. Excess Hours. Continuing education hours, not to exceed six (6) hours, accumulated during the twelve (12) months immediately preceding a license renewal may be applied toward meeting the continuing education requirement for the following license renewal. Excess hours may be used only during the next renewal period and may not be carried forward more than one (1) year. (____)

301. -- 324. (RESERVED).

325. CODE OF ETHICS (RULE 325).

01. Patient's Visual Welfare. The licensed optometrist shall keep the patient's visual welfare uppermost in his consideration at all times and promote the best methods of care for the visual needs of mankind. (7-1-93)

02. Confidentiality. The optometrist shall preserve information concerning his patients in confidence and not release that information unless authorized by the patient. An

optometrist may, however, supply information of an otherwise confidential or privileged nature when lawfully subpoenaed to testify at a deposition or hearing in any proceeding before the Board of Optometry, or at any other time and place ordered by a court of law. (7-1-93)

03. Conduct of Practice. The optometrist shall conduct his practice in a dignified and professional manner and in keeping with the mode of practice of a professional person entrusted with the care of the health of citizens of this state and shall abide by the rulings of the Board of Optometry. (7-1-93)

04. Unprofessional Conduct. In order to define what constitutes unprofessional conduct, the board ~~*hereafter lists and*~~ sets forth certain prohibited actions. In conducting his practice, an optometrist must not: ~~*(7-1-93)*~~(____)

a. Practice optometry in any manner other than as a professional person in an individual capacity, or in partnership with or associate with other licensed health care professionals~~*, under his own name and not as a corporation or officer or agent of a corporation or other business entity*~~. An optometrist may be a stock holder in and practice as a member of a professional service corporation with other licensed health care professionals as authorized by Title 54, Chapter 15, Idaho Code, but the optometrist must list his individual name as well as any name selected for the professional service corporation on any letterheads, telephone directories, office or building directories, or other places where the general public might be advised of the fact that the individual is practicing optometry, as required by these rules. ~~*(3-15-02)*~~(____)

b. Use either "Cappers" or "Steerers" or accept a split or divided fee for the purpose of obtaining patients or use solicitors or agents for the purpose of securing patients or conducting eye examinations or furnishing optometric services. (7-1-93)

~~**c.** *Make or conspire to make any arrangement, agreement, or engage in any practice whereby a supplier of ophthalmic materials shall:* *(7-1-93)*~~

~~*i. Provide office space for an optometrist.* *(7-1-93)*~~

~~*ii. Pay rent upon the office space occupied by an optometrist.* *(7-1-93)*~~

~~*iii. Pay the professional fees of an optometrist.* *(7-1-93)*~~

~~*iv. Pay for the advertising for an optometrist.* *(7-1-93)*~~

~~*v. Pay commissions to an optometrist upon ophthalmic materials furnished by such optometrist to his patients.* *(7-1-93)*~~

~~*iv. Consistently refer prospective purchasers of ophthalmic materials to an optometrist in violation of the law.* *(7-1-93)*~~

~~**d**~~**c.** Allow his prescription files and records to be used by any unlicensed person, firm, or corporation for the practice of optometry. (7-1-93)

~~**e.** *As a regular pattern of practice, accept referrals from retail optical outlets that*~~

~~violate section 54-1525, Idaho Code, pertaining to referral of patients, or which are located in close proximity to the optometrist's office for the purpose of inducing consistent patronage of his services because of location of office rather than professional reputation. (7-1-93)~~

~~f~~**d.** Fail to perform services for which fees have been received. (7-1-93)

~~g~~**e.** File false reports of services performed or fees rendered. (7-1-93)

~~h~~**f.** Permit the use of his name or professional title by or in conjunction with any person not an optometrist, or any firm, company, corporation or military association which illegally practices or in any manner holds himself or itself out to the public as being entitled to practice the profession of optometry when not licensed to do so under the law of Idaho or which uses the title "Optometric Services" in such a manner in advertising as to convey to the public the impression that the individual or corporation is entitled to practice optometry or furnish optometric advice or services when not so authorized by law. (7-1-93)

~~i~~**g.** Enter into or continue in a contract, agreement, or understanding of any kind, or engage in any course of conduct with any person, firm or corporation, or their agents, whereby said optometrist expressly or impliedly agrees: (7-1-93)

i. To refer the patient back to said person, firm, or corporation referring the patient for any subsequent service or receipt of ophthalmic material. (7-1-93)

ii. That if any patient is referred by any person, firm or corporation to the optometrist, the optometrist will refrain from supplying to the patient any ophthalmic materials. (7-1-93)

~~j~~**h.** Directly or indirectly give any person, association, firm or corporation, or their agents, anything of pecuniary benefit or value as consideration for the referral of any patient to said optometrist. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

450. CONTENTS OF PRESCRIPTION (RULE 450).
Every prescription written or issued by an optometrist practicing in Idaho shall contain at least the following information: (7-1-93)

01. Prescription for Spectacles. Prescriptions for spectacles shall contain the following: (7-1-93)

a. Sphere, cylinder, axis, prism power and additional power, if applicable; and ~~(7-1-93)~~(____)

~~**b.** Position of optical center or interpupillary distance; (7-1-93)~~

c. ~~Seg type; and (7-1-93)~~

~~d~~**b.** Expiration date of the prescription. (7-1-93)

02. All Prescriptions for Rigid Contact Lenses. All prescriptions for rigid contact lenses shall contain at least the following information: (7-1-93)

a. Base curve; (7-1-93)

b. Peripheral curve or curves including width; (7-1-93)

c. Overall diameter; (7-1-93)

d. Optical zone diameter; (7-1-93)

e. Power; and ~~(7-1-93)~~(____)

~~**f.** Center thickness; (7-1-93)~~

~~**g.** Color; and (7-1-93)~~

~~**h**~~**f.** Expiration date of the prescription. (7-1-93)

03. All Prescriptions for Soft Contact Lenses. All prescriptions for soft contact lenses shall contain at least the following information: (7-1-93)

a. Lens manufacturer or "brand" name; (7-1-93)

b. Series or base curve; (7-1-93)

c. Power; (7-1-93)

d. Diameter, if applicable; (7-1-93)

e. Color, if applicable; and (7-1-93)

f. Expiration date of the prescription. (7-1-93)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.14.01 - RULES OF THE STATE BOARD OF SOCIAL WORK EXAMINERS

DOCKET NO. 24-1401-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-3204, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 404 through 407.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 25th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3204, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: **The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:**

To clarify required credentials to be filed, allow for termination of inactive files after twenty-four (24) months of no contact, and delete sections pertaining to Clinical Practice Exemption and Independent Practice as deadline is past.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

011. -- 0~~99~~74. (RESERVED).

075. CREDENTIALS TO BE FILED BY ALL APPLICANTS (RULE 075).

01. Completed Application. An application shall be completed by all applicants for licensure upon a form prescribed by the State Board of Social Work Examiners. ( )

02. Official Documents. All applicants shall arrange for official documents including transcripts to be transmitted by the registrars of the educational institutions or official custodian of documents, directly to the board. ( )

03. Applications on File. Applications on file with the Board for a period in excess of two (2) years from the date of receipt by the Bureau shall be terminated unless good cause is demonstrated to the Board. ( )

076. -- 099. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

201. PRACTICE OF SOCIAL WORK.

01. Baccalaureate Social Work. The application of social work theory, knowledge, methods, and ethics to restore or enhance social or psychosocial functioning of individuals, couples, families, groups, organizations, and communities. Baccalaureate social work is a generalist practice that includes assessment, planning, intervention, evaluation, case management, information and referral, supportive counseling, supervision, and consultation with clients. Baccalaureate social work also includes advocacy, education, community organization, and the development, implementation and administration of policies, programs, and activities. Bachelor level social workers are prohibited from performing psychotherapy. (3-20-04)

02. Master's Social Work. The application of social work theory, knowledge, methods and ethics, and the professional use of self to restore or enhance social, psychosocial or biopsychosocial functioning of individuals, couples, families, groups, organizations, and communities. Master's social work requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supportive counseling, supervision and consultation with clients, advocacy, teaching, research, community organization, and the development, implementation, and administration of policies, programs, and activities. Master level social workers who do not hold clinical licensure may provide psychotherapy only under the supervision of a licensed clinical social worker, psychologist, or psychiatrist and in accordance with an approved supervision plan. (3-20-04)

03. Clinical Social Work. The practice of clinical social work is a specialty within the practice of master's social work and requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions. Clinical social work is based on knowledge and theory of psychosocial development, behavior, psychopathology, motivation, interpersonal relationships, environmental stress, social systems, and cultural diversity, with particular attention to person-in-environment. It shares with all social work practice the goal of enhancement and maintenance of psychosocial functioning of individuals, families, and small groups. Clinical social work includes, but is not limited to, individual, couples, family and group

psychotherapy, and includes independent and private practice. (3-20-04)

~~***04. Clinical Practice Exemption**. A social worker licensed in Idaho at the masters level prior to August 5, 2002 engaged in clinical social work and employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility may meet the supervised experience requirement for clinical licensure upon submission of documentation prior to July 1, 2006 showing a minimum of one hundred (100) face-to-face hours of employer provided supervision. No more than seventy-five (75) hours of supervision may be provided by a licensed counselor, marriage and family therapist, or psychiatric nurse and no less than twenty-five (25) hours of supervision may be provided by a licensed clinical social worker, psychologist, or an individual licensed to practice medicine and surgery who practices in the area of psychiatry. A licensed social worker who meets the requirements of Section 201 may continue to practice clinical social work until July 1, 2006. An individual practicing under this exemption must still pass the clinical examination as set forth in Section 350 prior to clinical licensure. (3-14-05)*~~

~~***05. Independent Practice of Social Work**. As defined in Section 54-3207, Idaho Code, is that practice in which an individual who, wholly or in part, practices social work autonomously, with responsibility for that practice. No baccalaureate or masters level social worker shall engage in independent practice until such time as the social worker shall have worked in a supervised setting and received a minimum of three thousand (3000) hours in a supervised setting in no less than two (2) years. Anyone holding a current Idaho Social Work license who was licensed in Idaho prior to August 5, 2002 shall be exempt from the requirement to submit a plan of supervision and may apply for the Independent Practice certification. Such applicant shall, prior to July 1, 2006, submit documentation establishing that a minimum of three thousand (3,000) hours of supervised practice, including one hundred (100) face-to-face hours, was obtained in a supervised setting and provided by a qualified and experienced professional working in the same area of practice; that supervision occurred on a regular and on-going basis; and that the supervisor(s) held a social work license in good standing. (3-14-05)*~~

0~~6~~4. Private Practice of Social Work. As defined in Section 54-3207, Idaho Code, is that independent practice in which an individual sets up and maintains responsibility for the contractual conditions of payment with clients, agencies, or institutions. (5-3-03)

0~~7~~5. Employment of a Social Worker. A social worker employed directly by a physician, psychologist or other social worker, or by a public or private agency, institution, hospital, nursing home, rehabilitation center, or any similar facility, is not to be considered within the definition of an independent practitioner. Furthermore, a social worker who contracts with an agency or institution that assumes full responsibility for and supervises the services provided to clients is not considered to be a private practitioner. (5-3-03)

0~~8~~6. Supervision. Supervised experience shall be required for both independent practice status and clinical licensure. Consultative-teaching supervision is directed toward enhancement and improvement of the individual's social work values, knowledge, methods, and techniques. A total of three thousand (3,000) hours of supervised social work experience accumulated in not less than two (2) years is required. Actual supervisor contact shall be face-to-face and provided by a qualified and experienced professional working in the same area of practice and must occur on a regular and on-going basis and consist of a minimum of one hundred

hours (100) hours. Ratio of supervisor/supervisee shall not exceed two (2) social workers to one (1) supervisor per hour of supervision. Group supervision totaling no more than fifty (50) hours will be allowed for groups of no more than six (6) persons and the allowable credit shall be prorated at the two to one (2 to 1) ratio (total session minutes divided by total supervisees multiplied by two (2) equals maximum allowable credit per supervisee for the session. i.e. an individual attending a one (1) hour group supervisory session consisting of six (6) supervisees shall be allowed twenty (20) minutes of group supervision credit). Supervisors must hold a degree in social work and a current license in good standing, except as noted in Subsection 201.08.c. (4-11-06)

a. Supervision of baccalaureate social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the baccalaureate, masters, or clinical level. (3-20-04)

b. Supervision of masters social workers pursuing licensure as independent practitioners must be provided by a licensed social worker approved to provide independent practice at the masters or clinical level. (5-3-03)

c. Supervision of social workers pursuing licensure as clinical level practitioners must be provided by either a licensed clinical social worker, a licensed clinical psychologist, a person licensed to practice medicine and surgery who practices in the area of psychiatry, a licensed clinical professional counselor registered as a supervisor or a licensed marriage and family therapist registered as a supervisor and must focus on clinical social work as defined. No less than fifty percent (50%) of supervised experience must be provided by a licensed clinical social worker. A social worker pursuing licensure at the clinical level must document one thousand seven hundred fifty (1,750) hours of direct client contact of the required three thousand (3,000) hours in clinical social work as defined. (3-14-05)

d. Supervision reports shall be submitted from each supervisor directly to the Board within thirty (30) days following each six (6) month period. Failure of the supervisor to submit the required reports in a timely manner may result in the supervisor being restricted by the Board from providing further supervision. (3-20-04)

0~~9~~7. **Supervised Practice Required**. To be eligible for licensure as an independent practitioner a candidate must: (5-3-03)

a. Meet the requirements set forth in Subsection 201.08; (3-20-04)

b. Develop a plan for supervision that must be approved by the Board prior to commencement of supervision. Prior to a change in supervisors, the supervisee must notify the Board and the change must be approved by the Board prior to the commencement of supervision by the new supervisor; and (5-3-03)

c. Not have more than two (2) supervisors at any given time. (5-3-03)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.15.01 - RULES OF THE IDAHO LICENSING BOARD OF PROFESSIONAL COUNSELORS AND MARRIAGE AND FAMILY THERAPISTS

DOCKET NO. 24-1501-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-3404, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 408 through 412.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 25th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-3404, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update incorporation by reference pertaining to ethics, revise counselor supervisor requirements, clarify qualifications for clinical professional counselors, clarify supervision for marriage and family therapists, and add national credential registry for endorsement qualifications.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE (RULE 4).

01. ACA Code of Ethics. "ACA Code of Ethics and Standards of Practice," as published by the American Counseling Association (ACA), effective ~~*1995*~~ 2005 and referenced in

Subsections 241.02, 350, and 450.01, is herein incorporated by reference and is available from the Board's office and on the Board web site. ~~(3-30-06)~~(____)

02. AAMFT Code of Ethics. The document titled "AAMFT Code of Ethics", as published by the American Association for Marriage and Family Therapy (AAMFT), effective July 1, 2001 and referenced in Subsections 350, and 450.01, is herein incorporated by reference and is available from the Board's office and on the Board web site. (3-30-06)

03. ACES Guidelines. The document titled "ACES" that provides supervision guidelines for supervisors, as published by the Association for Counselor Education and Supervision (ACES), dated March 1993 referenced in Subsection 200.03.a., is herein incorporated by reference and is available from the Board's office and on the Board web site. (4-2-03)

04. Guidelines. The document titled "Approved Supervision Designation Handbook" that provides supervision guidelines for supervisors, as published by the American Association for Marriage and Family Therapy (AAMFT), dated October 2002 referenced in Subsection 240.03.a., is herein incorporated by reference and is available from the Board's office and on the Board web site. (3-20-04)

(BREAK IN CONTINUITY OF SUBSECTIONS)

200. COUNSELOR SUPERVISOR REQUIREMENTS (RULE 200).
Effective July 1, 2004, Idaho licensed counselors shall be registered with the Board in order to provide postgraduate supervision for those individuals pursuing licensure in Idaho as a counselor. (4-2-03)

01. Requirements for Registration. (4-2-03)

a. Document at least two (2) years experience as a licensed counselor ~~*in Idaho*~~. ~~(4-2-03)~~(____)

b. Document at least one thousand five hundred (1,500) hours of direct client contact as a counselor. (4-2-03)

c. Document fifteen (15) contact hours of education in supervisor training as approved by the Board. (4-2-03)

d. Have not been the subject of any disciplinary action for five (5) years prior to application for registration. (4-2-03)

02. Registration. A supervisor applicant shall submit to the Bureau a completed application form as approved by the Board. (4-2-03)

a. Upon receipt of a completed application verifying compliance with the

requirements for registration as a supervisor, the applicant shall be registered as a supervisor. (4-2-03)

b. A supervisor's registration shall be valid only so long as the individual's counselor license remains current and in good standing. (4-2-03)

03. Supervision. (4-2-03)

a. A Registered Counselor Supervisor shall provide supervision in conformance with the guidelines for supervisors dated March 1993, adopted by the Association for Counselor Education and Supervision. (4-2-03)

b. A Registered Counselor Supervisor shall not provide supervision to more than six (6) individuals. (3-30-06)

201. -- 224. (RESERVED).

225. CLINICAL PROFESSIONAL COUNSELOR LICENSURE (RULE 225).
Licensure as a "clinical professional counselor" shall be restricted to persons who have successfully completed the required examination and the following: (3-30-06)

01. Requirements. The following requirements must be met: (3-13-02)

a. Hold a valid licensed professional counselor license; and (4-2-03)

b. Document two thousand (2,000) hours of direct client contact experience under supervision accumulated in no less than a two (2) year period after licensure in any state. (4-2-03)

i. All applicants for Clinical Professional Counselor license must provide verification of meeting at least one thousand (1,000) hours of supervised experience under the supervision of a licensed Clinical Professional Counselor. The remainder of the supervision may be provided by licensed Psychiatrists, Counseling/Clinical Psychologists, Licensed Clinical Social Workers registered with the Board of Social Work Examiners, or Marriage and Family Therapists registered with the Board. ~~(4-6-05)~~( )

ii. The ratio for supervision will consist of one (1) hour of face-to-face, one-on-one (1:1) or one-to-two (1:2) supervision to every thirty (30) hours of direct client contact. (7-1-97)

iii. No more than one-half (1/2) of group supervision shall be allowed. ( )

c. Successful completion of the required written examination. (3-30-06)

d. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

02. Supervisors. A supervisor may supervise no more than six (6) licensed professional counselors. (3-30-06)

226. -- 237. (RESERVED).

238. MARRIAGE AND FAMILY THERAPISTS (RULE 238).
The following requirements must be met for marriage and family therapist licensure: (3-13-02)

01. Graduate Degree. Possess a graduate degree as outlined in Section 54-3405C(1), Idaho Code. (3-13-02)

02. Practicum. Must meet the requirements as outlined in Section 54-3405C(2), Idaho Code. (3-13-02)

03. Supervised Marriage and Family Therapy Experience. Must meet the three thousand (3,000) hour requirement as outlined in Section 54-3405C(3), Idaho Code. Effective July 1, 2004, a Marriage and Family Therapist must be registered with the Board to provide post graduate supervision. (4-2-03)

a. A minimum of two thousand (2,000) postgraduate direct client contact hours, in no less than a two (2) year time period shall include; (3-13-02)

i. A minimum one thousand (1,000) direct client contact hours with couples and families; and (3-13-02)

ii. Two hundred (200) hours of supervision. (3-13-02)

b. Supervision must be obtained from a registered marriage and family therapist supervisor or a licensed clinical professional counselor registered with the Board, licensed psychologist, licensed clinical social worker registered with the Board of Social Work Examiners, or licensed psychiatrist who documents: ~~(3-20-04)~~(____)

i. A minimum of five (5) years of experience providing marriage and family therapy; and (3-20-04)

ii. Fifteen (15) contact hours of education in supervisor training; and (3-20-04)

iii. Has not been the subject of any disciplinary action for five (5) years immediately prior to providing supervision. (3-20-04)

c. No more than one hundred (100) hours of group supervision shall be allowed. Group supervision shall be defined as no more than six (6) supervisees per each supervisor; and (3-13-02)

d. Individual supervision is defined as up to two (2) supervisees per supervisor; and (3-13-02)

e. Supervision must employ the use of audio technologies or video technologies or co-therapy, or live supervision; and (3-13-02)

f. In accordance with the adopted Codes of Ethics prohibiting dual relationships, a

supervisor shall not act as an applicant's personal Professional Counselor/Therapist. (3-13-02)

g. The Board shall consider the recommendation of the supervisor(s) when determining the acceptability of the applicant's supervised experience. (4-2-03)

04. Examination. (3-13-02)

a. The Board requires successful passage of the National Marital and Family Therapy Examination as approved by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB). (3-13-02)

b. The examination will be conducted at a time and place specified by the Board. (3-13-02)

c. Successful passage of the examination is defined by the Board as achievement of the passing score set by the AMFTRB. Reexamination shall consist of the entire examination. (3-13-02)

(BREAK IN CONTINUITY OF SUBSECTIONS)

300. ENDORSEMENT (RULE 300).
The Board may grant a license to any person who submits a completed application on a form approved by the board together with the required fees and who: (3-13-02)

01. **Holds a Current License**. The applicant must be the holder of a current active license, in the profession for which a license is being sought, issued by the authorized regulatory entity in another state or country, the certification of which must be received directly by the board from the issuing agency; and (3-13-02)

02. Has Not Been Disciplined. The applicant must certify they have not been disciplined within the last five (5) years, had a license revoked, suspended, restricted, or otherwise sanctioned by any regulatory entity and has never voluntarily surrendered a license; and (3-13-02)

03. Is of Good Moral Character. The applicant must certify they are of good moral character and have not been convicted, found guilty, or received a withheld judgment or suspended sentence for any felony; and (3-13-02)

04. Has Documented Experience. The applicant must provide a documented record of at least five (5) years actual practice under licensure immediately prior to application in the profession for which a license is being sought, or can demonstrate hardship or extenuating circumstances that prohibited practice during a portion of the five (5) year period as determined by the board; and (3-13-02)

05. Will Abide by Laws, Rules and Code of Ethics. The applicant must certify under

oath to abide by the laws and rules governing the practice of counseling and marriage and family therapy in Idaho and the applicable code of ethics as adopted; and either ~~(3-13-02)~~(____)

06. **National Credential Registry**. If applicant has been granted credentials by the American Association of State Counseling Boards as qualifying for Category II of the national credential registry or any such similar qualification granted by a national credentialing entity otherwise approved by the Board; or (____)

0~~6~~7. **Provides Information**. The applicant must document at least three (3) of the following during the five (5) years immediately prior to application: (3-13-02)

a. A minimum of one thousand (1,000) hours client contact; (3-13-02)

b. Service as an officer of a state or national counseling or marriage and family therapy organization, or a member of a state or national counseling or marriage and family therapy board or committee, or other leadership positions as may be approved by the board; (3-13-02)

c. Teaching at least three (3) graduate courses for credit at an accredited college or university; (3-13-02)

d. A certificate to supervise issued by the NBCC or AAMFT; (3-13-02)

e. Providing at least twelve (12) months of supervision to each of no less than three (3) persons seeking licensure; (3-13-02)

f. Maintained professional liability insurance for the previous five (5) years with proof of no claims filed; (3-13-02)

g. Obtained a post graduate degree in a field of study related to counseling or marriage and family therapy that is in addition to the minimum licensure requirements; (3-13-02)

h. Current certification by a national credentialing entity as approved by the board in the discipline for which licensure is sought; (3-13-02)

i. Twenty (20) hours of continuing education per year for the five (5) years immediately prior to application. (3-13-02)

IDAPA 24 - BUREAU OF OCCUPATIONAL LICENSES

24.17.01 - RULES OF THE IDAHO STATE BOARD OF ACUPUNCTURE

DOCKET NO. 24-1701-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section(s) 54-4705, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 413 and 414.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Cherie Simpson at (208) 334-3233.

DATED this 25th day of October, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section(s) 54-4705, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation

must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Update contact information for the Board and to reduce the original license fee and the annual renewal fee from $250 to $200 per license.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

There is no impact on general funds. This change would reduce the cash balance in dedicated funds for the Board by a total of approximately $7,050 per year. The original license fee and renewal fee are authorized pursuant to Section 54-4710, Idaho Code.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because there was no controversy on the changes.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Cherie Simpson at (208) 334-3233.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 14th day of August, 2006.

Rayola Jacobsen
Bureau Chief
Bureau of Occupational Licenses
1109 Main St., STE 220
Boise, ID 83702
(208) 334-3233
(208)334-3945 fax

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

005. ADDRESS OF THE IDAHO STATE BOARD OF ACUPUNCTURE (RULE 5).
The office of the Board of Acupuncture is located within the Bureau of Occupational Licenses, Owyhee Plaza, 1109 Main St., Suite 220, Boise, ID 83702. The phone number of the Board is

(208) 334-3233. The Board's FAX number is (208) 334-3945. The Board's e-mail address is ~~acu@ibol.state.id.us~~ acu@ibol.idaho.gov. The Board's official web site is at ~~http://www.ibol.idaho.gov/acu.htm~~ www.ibol.idaho.gov/acu.htm. ~~(4-6-05)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

300. FEES (RULE 300).

01. Application Fee. Application fee for any original license or certification – two hundred ~~fifty~~ dollars ($2~~5~~0~~0~~0). ~~(3-30-01)~~(____)

02. Original License Fee. (3-30-01)

a. Original license fee - two hundred ~~fifty~~ dollars ($2~~5~~0~~0~~0). ~~(3-30-01)~~(____)

b. Original fee for Certification - two hundred ~~fifty~~ dollars ($2~~5~~0~~0~~0). ~~(3-30-01)~~(____)

c. Original fee for Technician Certification - one hundred fifty dollars ($150). (3-30-01)

03. Annual Renewal Fee. (3-10-00)

a. Annual renewal fee for Licensure – two hundred ~~fifty~~ dollars ($2~~5~~0~~0~~0). ~~(3-30-01)~~(____)

b. Annual renewal fee for Certification – two hundred ~~fifty~~ dollars ($2~~5~~0~~0~~0). ~~(3-30-01)~~(____)

c. Annual renewal fee for Technician Certification – one hundred fifty dollars ($150). (3-10-00)

04. Inactive License. Inactive license or certification fee – fifty dollars ($50). (3-30-01)

05. Non-refundable. All fees are non-refundable. (3-10-00)

06. Yearly Fees. With the exception of Subsection 300.01 and 300.02 all fees provided under these rules are yearly fees. (3-10-00)

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0602

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 54-1717 and 37-2715, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 79 and 80.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

DATED this 23rd day of August, 2006.

THIS NOTICE WAS PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is July 31, 2006.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 54-1717and 37-2715, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an

agency, not later than August 16, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Pharmacies in Idaho have requested specificity regarding the positive identification records to be kept by pharmacies when filling prescriptions for controlled substances. Clarification was also requested by the legislative committee which reviewed the rule during the 2006 legislative session. There is an immediate need for the rule change to assist pharmacies to protect the public health and welfare of Idaho citizens by maintaining appropriate records for law enforcement and the Board of Pharmacy with respect to regulation of controlled substance prescription drugs. The proposed rule changes specifically delineate the positive identification information that pharmacies must keep when dispensing controlled substance prescription drugs directly to individuals at the pharmacy. The proposed rule changes also specifically set out the standards to be met by the pharmacies with respect to retrieval of the positive identification information.

TEMPORARY RULE JUSTIFICATION: **Pursuant to Section 67-5226(2)(a) and (b), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:**

This temporary rule is necessary to protect the public health and welfare and to comply with deadlines in amendments to governing law.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the immediate need for the rule change.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact R. K. “Mick” Markuson, Director, (208) 334-2356.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before August 23, 2006.

DATED this 13th day of July 2006.

R. K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720, Boise ID 83720-0067
Phone: (208) 334-2356; Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

464. FILLING OF A PRESCRIPTION FOR A CONTROLLED SUBSTANCE.

01. Filling and Dispensing. No person other than a registered pharmacist under the laws of this state shall be responsible for the filling and dispensing of a prescription for a controlled substance. (7-31-06)T

02. Identification. Persons receiving controlled substances shall be positively identified by staff at the pharmacy at the time any controlled substance is dispensed directly to an individual at the pharmacy. (7-31-06)T

a. Positive identification shall consist of either a valid, current state or military drivers license or identification card, or a valid, current passport, each of which must contain a photo of the individual and the individual's signature. For each controlled substance prescription dispensed directly to an individual at the pharmacy, the pharmacy shall maintain a record of; (7-31-06)T

i. The name of the person receiving the prescribed controlled substance (if other than the patient); (7-31-06)T

ii. The type of positive identification presented by such person; (7-31-06)T

iii. The state, military branch or other governmental entity issuing the identification; and (7-31-06)T

iv. The specific identification number of the drivers license, identification card or passport. (7-31-06)T

b. In lieu of these means of positive identification, an individual whose identity is personally and positively known to a staff member of the pharmacy who is present and who identifies the individual at the time of delivery of the prescribed controlled substance may be so identified by the staff member; in such instances, the pharmacy shall maintain a record of: (7-31-06)T

i. The name of the person receiving the prescribed controlled substance (if other than the patient); (7-31-06)T

ii. A notation indicating that the patient or other person receiving the prescribed controlled substance was known to the pharmacy staff; and (7-31-06)T

iii. The name of the pharmacy staff person making the identification. ~~(4-11-06)~~(7-31-06)T

03. Retrieval of Identification Records. The identification records required under Subsection 464.02 of this rule may be maintained by the pharmacy in any fashion provided that the pharmacy must be able to produce such records upon any lawful request, and match the prescription filled with the positive identification records for the person receiving the prescribed controlled substances, within no more that two (2) business days from the date of the request. (7-31-06)T

IDAPA 27 - BOARD OF PHARMACY

27.01.01 - RULES OF THE IDAHO STATE BOARD OF PHARMACY

DOCKET NO. 27-0101-0603

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 37-2702, 37-2715, and 54-1717 Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 4, 2006 Idaho Administrative Bulletin, Vol. 06-10, pages 426 and 427.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the temporary and proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356.

DATED this 26th day of October 2006.

EDITOR'S NOTE: Docket No. 27-0101-0602 was mistakenly published twice in the Administrative Bulletin under two (2) different docket numbers. It was originally published correctly in the August 2, 2006 Administrative Bulletin, Volume 06-8, under Docket No. 27-0101-0602. It was inadvertently republished in the September 6, 2006 Administrative Bulletin, Volume 06-9, under Docket No. 27-0101-0603. Docket number 27-0101-0603 is being used for this current proposed rulemaking.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that

this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2702, 37-2715, and 54-1717, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 18, 2006.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The proposed rulemaking is necessary to clarify the obligation of licensed pharmacies to submit theft loss information to the Idaho Board of Pharmacy. The pharmacies are already required to submit this information to the DEA and they need only send a copy of the completed DEA form to the Board. This information will assist the Board in protecting the public from the effects of unauthorized use and diversion of controlled substances. The proposed change requires licensed pharmacies to submit the same theft loss information to the Idaho Board of Pharmacy that they now submit to the DEA.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the relatively simple nature of the rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact R. K. "Mick" Markuson, Director, (208) 334-2356..

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 25, 2006.

DATED this 23rd day of August, 2006.

R. K. "Mick" Markuson, Director
Idaho State Board of Pharmacy
3380 Americana Terrace, Ste. 320
P. O. Box 83720
Boise ID 83720-0067

Phone: (208) 334-2356
Fax: (208) 334-3536

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

142. STANDARDS OF CONDUCT.

01. Duty to Cooperate in Investigation. It is the duty of every licensee to cooperate with a disciplinary investigation and any failure or refusal to do so is grounds for disciplinary action. (4-6-05)

02. Duty to Report Theft, Loss, or Adulteration. It is the duty of every pharmacist-in-charge or pharmacy director to report any theft or loss of controlled substances and any adulteration of any prescription drug to the Board, even if the theft, loss, or adulteration has been accounted for and the employee disciplined internally. The report of theft or loss required hereunder shall contain all of the information reported to the Drug Enforcement Administration (DEA) as required under 21 CFR 1301.74(c), which information shall be reported to the Board at the same time it is reported to the DEA. ~~(4-6-05)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

471. THEFT LOSS REPORTS

It is the duty of every Registrant to report any theft or loss of controlled substances to the Board, even if the theft or loss has been accounted for and the employee disciplined internally. The report of the theft or loss required hereunder shall contain all of the information reported to the Drug Enforcement Administration (DEA) as required under 21 CFR 1301.74(c), which information shall be reported to the Board at the same time it is reported to the DEA. ( )

47~~1~~2. -- 490. (RESERVED).

IDAPA 41 - PUBLIC HEALTH DISTRICTS

41.01.01 - RULES OF PANHANDLE HEALTH DISTRICT 1

DOCKET NO. 41-0101-0601

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2007 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session except as otherwise provided by the rule change, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 39-416, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Expand Institutional Controls Program to include OU-3 (Coeur d'Alene River Basin) because remediation is taking place in OU-3 of the Bunker Hill Superfund site cleanup. Rules proposed are very similar to existing rules codified in IDAPA 41.01.01.500 – merely covers additional lands with minor changes in procedure and standards to reflect differences in Record of Decision. Additional changes have been proposed to the District's rules to clarify septic tank standards and procedures, to clarify existing rules regarding critical materials on the Rathdrum Prairie Aquifer, to correct outdated references to the Department of Health and Welfare and to include required sections as requested by the Office of Administrative Rules.

The pending rule is being adopted as proposed, subject only to proofreading corrections authorized pursuant to Section 67-5228, Idaho Code. The complete text of the proposed rule was published in the October 4, 2006, Idaho Administrative Bulletin, Vol. 06-10, pages 539 through 563.

FISCAL IMPACT: The proposed rule would not have a negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year as a result of this rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Jerry Cobb (Shoshone County/Bunker Hill), 114 West Riverside, Kellogg, ID (208) 783-0707 or Dale Peck, (all other changes) 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

DATED this 15th day November, 2006.

THIS NOTICE WAS PUBLISHED FOR THE PUBLIC HEARING

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has scheduled a public hearing. The action is authorized pursuant to Section 39-416, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held as follows:

December 12, 2006
2:00 p.m.
Panhandle Health District
8500 N. Atlas Road
Hayden, ID 83835

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The summary of this action is found in Idaho Administrative Bulletin Vol. 06-10, dated October 4, 2006, pages 539 through 563.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking or the hearing schedule, contact Dale Peck, 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

DATED this 10th day of November, 2006.

THIS NOTICE WAS PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 39-416, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be held in Coeur d'Alene and Kellogg, not less than fourteen (14) days after publication of this Notice. Exact dates and times will be published as required by law once hearing dates are chosen.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Expand Institutional Controls Program to include OU-3 (Coeur d'Alene River Basin)

because remediation is taking place in OU-3 of the Bunker Hill Superfund site cleanup. Rules proposed are very similar to existing rules codified in IDAPA 41.01.01.500 - merely covers additional lands with minor changes in procedure and standards to reflect differences in Record of Decision. Additional changes have been proposed to the District's rules to clarify sewage disposal systems standards and procedures, to clarify existing rules regarding critical materials on the Rathdrum Prairie Aquifer, to correct outdated references to the Department of Health and Welfare and to include required sections as requested by the Office of Administrative Rules.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased:

Specific fees established by prior rule will be extinguished, to be set by resolution of the Board of Health in subsequent proceedings in accordance with provisions of IDAPA 41.02.01. No fees will be established by this rulemaking.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars ($10,000) during the fiscal year as a result of this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because extensive negotiation with potentially affected parties was conducted prior to rulemaking process.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rules, contact Jerry Cobb (Shoshone County/Bunker Hill), 114 West Riverside, Kellogg, ID (208) 783-0707 or Dale Peck, (all other changes) 8500 N. Atlas Road, Hayden, ID 83835; (208) 415-5210.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to Dale Peck, Panhandle Health District, 8500 North Atlas Road, Hayden, ID 83835 and must be delivered on or before 5:00 p.m., local time, on October 25, 2006.

DATED this 30th day August, 2006.

Jeanne Bock, Director
Public Health District #1
8500 North Atlas Road
Hayden, ID 83835
Phone: (208) 415-5100
Fax (208) 415-5106

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE.

01. **Title**. These rules shall be cited as IDAPA 41.01.01, "Rules of Idaho Public Health District #1." ( )

02. **Scope**. These rules shall govern issues concerning the mission of Idaho Public Health District #1 as established by the Idaho Legislature, in particular addressing matters of local concern in order to protect public health and the environment in the counties that comprise the District. ( )

002. WRITTEN INTERPRETATIONS.
Written interpretations of these rules in the form of explanatory comments accompanying the notice of proposed rulemaking that originally proposed the rules and review of comments submitted in the rulemaking in the adoption of these rules are available for public inspection and copying at cost in the principal place of business of this agency. ( )

003. ADMINISTRATIVE APPEALS.
All contested cases shall be governed by the provisions of IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

004. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS.

01. **Office Hours**. The main office of the District is open from 8 a.m. to 5 p.m., except Saturday, Sunday and legal holidays. ( )

02. **Mailing and Street Address**. The District's mailing/street address is: Panhandle Health District, 8500 N. Atlas Road, Hayden, ID 83835. ( )

005. PUBLIC RECORDS.
Subject to Idaho Code provisions and applicable Federal statutes and regulations, official documents of the Panhandle Health District may be examined after filing of proper written request filed in the office of the Director at the address above. Among others, health-related and personnel- related records are generally not subject to public disclosure. Additional public records information may be obtained by contacting the Director's office. ( )

00~~7~~6. -- 009. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

100. WATER QUALITY CONTROL.

01. **Sewage and Waste Disposal -- Political Subdivisions**. Any political subdivision within the District may enter into a sewage management plan agreement with the District, the purpose of which will be to establish permanent sewage disposal practices that will fulfill the needs and goals of the political subdivision and the responsibilities of the District. The Board

shall have authority to enforce the provisions of sewage management plan agreements. (7-1-93)

02. Sewage and Waste Disposal -- Public Sewage Treatment. All public sewage treatment facilities shall be constructed and operated in accordance with applicable state and federal laws. All public sewage treatment facilities constructed after the effective date of this rule shall be owned, operated, or maintained by a political subdivision of the state of Idaho, as defined in Idaho Code or by such entity as may be deemed acceptable by the Board. All public sewage treatment facilities incorporating subsurface disposal in the design must include two (2) disposal fields, each sized for the design loading and capable of being alternately loaded; in addition, a third acceptable site, large enough to install an additional replacement field, must be available. (7-1-93)

03. Sewage and Waste Disposal -- Private Sewage Disposal. No residence, place of business, or other building where persons congregate, reside, or are employed shall hereafter be constructed or altered until the owner or builder or agent thereof shall have first been issued a permit to construct sanitary disposal facilities by the Health Officer. (7-1-93)

a. This rule shall not apply to any construction on a street or alley in which there is a public sanitary sewer or to any construction within two-hundred (200) feet of a public sanitary sewer where connection with such sewer is actually made. In such case, the residence, place of business, or other building shall connect to the sewer. (7-1-93)

b. The application for a permit to construct sanitary disposal facilities shall include all applicable information as set forth in the Idaho Department of ~~*Health and Welfare*~~ Environmental Quality Rules for Individual and Subsurface Sewage Disposal Systems, and by a fee as set in the fee schedule. ~~*(7-1-93)*~~(____)

c. No drywells or drainfields deeper than four (4) feet below ground level shall be permitted for the disposal of domestic sewage waste. No sewage holding or retention tanks shall be allowed as a method of sewage disposal for residential purposes unless the operation and maintenance, including pumping of the facility, is conducted by or under the authority of a political subdivision as defined in Idaho Code. (7-1-93)

d. No dwelling or building shall be occupied until the sanitary disposal facilities have been constructed, inspected, and approved by the Health Officer or his agents. The sanitary disposal facilities shall not be covered with dirt or otherwise completed until inspected and approved. (7-1-93)

e. The determination of wastewater flow for residential structures will be based on whichever of the following two methods is greater: (____)

i. Zero point twelve (0.12) gallons per day (gpd) per square foot of habitable space or (____)

ii. The method of determining flows as outlined in IDAPA 58.01.03, "Individual/ Subsurface Sewage Disposal Rules," or their successor. (____)

f. Septic tanks serving a dwelling unit must have a minimum liquid capacity of one

thousand (1000) gallons. Tank capacity must be increased by two hundred fifty (250) gallons for each fifty (50) gpd incremental increase in flow (or portion thereof) over three hundred (300) gpd. (____)

04. Sewage and Waste Disposal -- Septage Disposal Site. It shall be unlawful for any person engaged in the business, firm or corporation to clean any septic tank, sewage pit, or other means of sewage disposal, or to operate a septage disposal site within the limits of Panhandle Health District 1 without first having been issued a registration permit by the Health Officer. (7-1-93)

a. Application shall be made upon a form provided by the Health Officer and shall be accompanied by a fee as set in the fee schedule. The registration permit shall be issued yearly and shall be revocable for failure to comply with the rules governing sewage disposal. Each permit shall be only for the unexpired portion of the calendar year for which the permit is issued, and at the end of the calendar year all permits shall expire becoming void and of no further effect. (7-1-93)

b. Any person engaged in the business of removing and transporting sewage shall comply with all applicable rules governing removal, transportation, and disposal of sewage or sewage sludge issued by the Idaho State Department of Health and Welfare and with all applicable rules hereinafter adopted. (7-1-93)

c. All applications for permits to operate septage land disposal sites must be accompanied by a plan of operations which shall include details relative to application rates and methods, access control, odor control, control of surface water runoff, cropping, and vegetation. All land disposal sites must not be closer than three-hundred (300) feet from a property line, nor closer than one quarter (l/4) mile from a residence at the time the site is established. All disposal sites must provide access for all-weather operation. All land disposal sites established after the effective date of these rules may be required to have an engineering report prepared by a licensed engineer detailing such items as site topography, site boundaries, property boundaries, direction and distance to nearest residence(s), depth, and type of soil strata, depth to ground water, direction of prevailing winds, and such other information as may be deemed necessary by the Health Officer. All required information must be submitted to and approved by the Health Officer prior to the issuance of a permit. (7-1-93)

05. Sewage and Waste Disposal -- Prohibited Conditions. (7-1-93)

a. Domestic sewage, septage, sanitary sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to remain open to the atmosphere or on the surface of the ground in such a manner so as to be a source of noxious or offensive odors, to be dangerous to health, or to be a public nuisance. (7-1-93)

b. Domestic sewage, sanitary sewage, septage, industrial sewage, industrial waste, agricultural waste, sewage effluent, or human excreta shall not be allowed to endanger any source or supply of drinking water, or cause damage to any public or private property. (7-1-93)

c. Raw or untreated sewage, septage, or industrial waste, or agricultural waste shall not be allowed in any body of water, water course, or any underground water drain, any storm

water drain, channel, or other surface water drain. (7-1-93)

06. **Sewage and Waste Disposal**. Expansion or Replacement of a Structure with Existing Waste Disposal System (Vested Rights). ( )

a. The square footage of habitable space will be used to determine a vested right for expansion or replacement of a structure with an existing wastewater system. ( )

b. An increase in square footage of habitable space by more than ten percent (10%) when replacing or remodeling an existing structure with an existing wastewater system will require a septic system that meets current standards. ( )

c. An application for a subsurface sewage disposal repair permit is required for all remodeling or replacement of an existing structure served by a sewage disposal system which fails to have both a septic permit and an approved final inspection. The sewage disposal system must be upgraded to current standards if possible. If this is not possible, the sewage disposal system must be upgraded to the best possible system given the constraints of the property. The remodeled or replacement structure will be limited to no more than one hundred ten percent (110%) of the original structure's square footage of habitable space. An alternative system may be required. ( )

d. If a system has ceased to receive wastewater for one year or more, the system is considered abandoned. The abandoned site must be inspected to determine if it is in compliance with current regulations. If system is in compliance with current regulations, it can be used for the current approved habitable space. If system is not in compliance with current regulations, a repair permit will be required, and the system must be upgraded to current standards if possible. If current standards cannot be met, the best possible system given the constraints of the property must be installed. This may require the use of an alternative system. Once the system has been upgraded, it can be connected to. If the upgrade cannot meet current standards, the dwelling will be limited to no more than one hundred ten percent (110%) of the current approved habitable space. ( )

07. **Sewage and Waste Disposal**. Authorization to Connect to an Installed System. ( )

a. This applies to connection to an approved drainfield installation that has never received wastewater flows. ( )

b. Application must be made, and an authorization to connect permit issued, to determine that the site has not been compromised and continues to meet the standards under which the original permit was issued. A fee for such inspection may be set by the Board. From July 1, 2007, and thereafter, no permit shall be issued for a septic system separate from a concurrent request for a permit to establish a specific use and structure to be served by the requested septic system. ( )

101. -- 109. (RESERVED).

110. SEWAGE DISPOSAL ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.
The Board has determined that extensive use of subsurface wastewater disposal on the Rathdrum Prairie presents a threat to the public health by contamination of the Rathdrum Aquifer, which is a drinking water source. It is the intent of the Board to adopt rules to govern subsurface sewage disposal on the Rathdrum Prairie. (7-1-93)

01. Title. These rules, within this Section, shall be known and cited as the "Rathdrum Prairie Sewage Disposal Rules". (7-1-93)

02. Scope. The provisions of this Section shall apply to subsurface sewage disposal systems installed on the Rathdrum Prairie. (7-1-93)

03. Definitions. The following definitions shall apply to the Rathdrum Prairie sections of these rules. (7-1-93)

a. Sewage Loading. The total liquid volume of sewage produced on any given parcel of land and expressed as gallons/day. (7-1-93)

b. Dwelling Equivalent. The total sewage loading from a single family dwelling. When applied to structures or facilities other than housing units, a dwelling equivalent shall be equal to two-hundred and fifty (250) gallons per day or shall be equal to twenty (20) persons using a non-residential facility on forty (40) hour per week basis, with no wastewater generation except from restrooms. (7-1-93)

c. Rathdrum Prairie. That area of land situated in Kootenai County and more particularly defined by the USGS map describing the boundaries of the Rathdrum Prairie Aquifer identified and designated under the authority of Section l424(e) of the Safe Drinking Water Act (PL 93-523) (Federal Register, Vol. 43, No. 28 -Thursday, February 9, l978). (7-1-93)

d. Approved Subdivision. A legally platted parcel of land that has been signed and approved by the Panhandle Health District 1 as meeting the requirements of the Code. (7-1-93)

e. Sewage Management Plan. A method of action, procedure, or arrangement approved by the Panhandle Health District 1 describing how collection, treatment, and disposal of sewage shall be addressed within the boundaries of a political subdivision and shall include a map of the area affected by the Sewage Management Plan. (7-1-93)

04. Subsurface Sewage Disposal Systems. (7-1-93)

a. All installations of subsurface sewage disposal systems must be made in compliance with the Code and the rules of the Idaho Department of ~~*Health and Welfare*~~ Environmental Quality. ~~*(7-1-93)*~~( )

b. A subsurface sewage disposal system for one (1) dwelling equivalent may be installed without requirements other than Subsection 110.04.a., if the system is on a single parcel of land of five (5) acres or larger in surface area and the total loading for that parcel does not exceed one (1) dwelling equivalent per five (5) acres, except where one (1) system is replacing

another. Every parcel of land created after December 20, 1977, except as otherwise permitted by these rules, shall maintain the dwelling equivalent(s) allowed for the original parcel of land. (7-1-93)

c. No subsurface sewage disposal system shall be installed on any parcel of land of less than (5) five acres in surface area except under the following conditions: (7-1-93)

i. The parcel of land is located within the boundaries of a public sewer district or municipality where the governing board has adopted a Sewage Management Plan approved by the Board which will result in the construction and operation of, or connection to, a central sewage treatment plant. The Sewage Management Plan area must be entirely within the boundaries of the municipality, and the Sewage Management Plan must include a map delineating the boundaries of the Sewage Management Plan Area; (7-1-93)

ii. Parcels of land less than five (5) acres in size and acquired or established prior to December 20, 1977, will be permitted for a subsurface sewage disposal system for a single-dwelling equivalent, provided such parcels meet all other rules governing individual and subsurface sewage disposal systems; or (7-1-93)

iii. Where one (1) subsurface sewage disposal system is replacing another with no increase in sewage loading. (7-1-93)

d. On all developments subject to the provisions of Subsection 110.04.c.iii., the subsurface sewage disposal system shall have the dry or wet sewer system with necessary laterals installed within the development. All installations shall be done in coordination with local government planning, and approved by the state Department of Environmental Quality where applicable. (7-1-93)

e. Upon notification by the Health Officer the owner of any parcel of land utilizing a subsurface sewage disposal system shall disconnect such system from any buildings on his parcel of land and shall connect the building sewer from the buildings to a collection and treatment system whenever it becomes available for service to his parcel. (7-1-93)

111. -- 199. (RESERVED).

200. OPEN WATER PROTECTION.

01. Boats and Houseboats. (7-1-93)

a. It is unlawful for any boat, motorboat, floathouse, sailboat, or any other kind of boat containing wastewater facilities to be on the waters of any stream, river, or lake in Panhandle Health District 1 unless such wastewater facilities shall be sealed to prevent a discharge into any waters. The method of sealing such wastewater facilities shall be subject to the approval of Panhandle Health District 1. (7-1-93)

b. Any person authorized by the Health Officer or any law enforcement person may stop and board any boat on the said waters and examine the wastewater facilities on such boats to see that such facilities are properly closed and sealed. (7-1-93)

c. It shall be unlawful for any person to throw overboard, dump, or otherwise dispose of or discharge, or cause, permit, or suffer to be discharged, any garbage, refuse, rubbish, waste, or sewage from any boat into or upon the waters of any stream, river, lake, or other body of water within the boundaries of Panhandle Health District 1. (7-1-93)

d. If any watercraft located upon the waters of this District is found to have a marine toilet which is not in compliance with the requirements of this section, the Health Officer shall have the following alternative or cumulative powers to: (7-1-93)

i. Cause the marine toilet to be locked and sealed to prevent usage; (7-1-93)

ii. Require such watercraft to be removed from the waters of Panhandle Health District 1 until the marine toilets are made to conform with the requirements of this Code. (7-1-93)

02. Public and Private Marinas. (7-1-93)

a. Any marinas, whether public or private, providing moorage for vessels equipped with on-board wastewater facilities shall provide sewage waste disposal facilities. These facilities shall consist of a pump station that is capable of adequately cleaning waste retention tanks on the largest boat that could reasonably use the moorage. Such plans must be approved by the Department of ~~*Health and Welfare*~~ Environmental Quality. ~~*(7-1-93)*~~( )

b. All marinas, whether public or private, must provide shore-based toilet facilities for their users. (7-1-93)

03. Floathouses. (7-1-93)

a. All floathouses must have approved wastewater facilities. (7-1-93)

b. All discharges from all floathouses, whether old or new, regardless of source, are prohibited. (7-1-93)

c. All floathouses must obtain a sewage permit from Panhandle Health District 1. (7-1-93)

d. The cost of the permit shall be set in the fee schedule. (7-1-93)

201. -- 299. (RESERVED).

300. LAND QUALITY CONTROL.

01. Solid Waste Collection. It shall be unlawful for any person, private franchisee, or contract collector haulers to engage in the business of collection, transporting, hauling, or conveying any refuse over the roads, highways, streets, or alleys of Panhandle Health District 1, or to dump or dispose of the same unless and until each person obtains an annual permit from Panhandle Health District 1. (7-1-93)

02. Animals and Fowl. (7-1-93)

a. Every pen, yard, kennel, coop, warren, stable, or other enclosure or structure wherein animals or fowl are kept shall be maintained in a clean and sanitary condition, devoid of all rodents and vermin, and free from objectionable odor. (7-1-93)

b. No manure shall be allowed to accumulate such that it will be a source of flies or fly breeding, or a source of noxious or offensive odors, dangerous to health, or an unhealthy nuisance. (7-1-93)

c. No person owning or controlling the possession of horses, mules, cattle, sheep, goats, hogs, or other animals shall willfully or negligently keep or maintain such animal(s) in enclosures or permit such animal regularly to graze so as to constitute a public health hazard and/or a hazard to water quality. (7-1-93)

03. Subdivisions. (7-1-93)

a. All plats as defined in Title 50, Chapter 13, Idaho Code or local subdivision ordinance, shall bear a sanitary restriction in compliance with Sections 50-1326 to 50-1329, Idaho Code. The Health Officer shall be the delegate of the State Board of ~~*Health and Welfare*~~ Environmental Quality authorized to provide the certificate required in Section 50-1326, Idaho Code. ~~*(7-1-93)*~~(____)

b. Every person or corporation intending to file any plat with the office of any County Recorder in the District shall first present a copy of the proposed plat to the Health Officer and shall submit a written application for a permit, accompanied by fee as set in the fee schedule. Said application shall state the proposed method of water supply and sewage disposal for each site intended for sale in said plat. The Health Officer may require such additional information as he feels necessary to determine whether the sanitary restriction is satisfied. (7-1-93)

c. The Health Officer may require that a plat be served by a public water or sewer system prior to providing a certificate of approval in accordance with Section 50-1325, Idaho Code. (7-1-93)

d. In geographic locations where the cost of sewer facilities is presently economically prohibitive, and apparently will remain economically prohibitive during the next ten (10) years, the Health Officer may issue a certificate of approval when the following conditions are satisfied: (7-1-93)

i. Soil studies, such as a study of test borings, indicate that proper treatment and disposal can be achieved as determined by the Health Officer; (7-1-93)

ii. Groundwater, even under the most extreme conditions, will not be closer than six (6) feet from the ground surface; (7-1-93)

iii. The sewage disposal area has not been filled with more than two (2) feet of material within two (2) years of the date when the permit is requested; (7-1-93)

iv. At least two (2) drainfield systems can be provided within each lot. (7-1-93)

e. Nothing in this section shall be deemed to waive or modify in any respect any of the other rules of this Code. Approval of a plat shall not bar or stop the Health Officer at any later time from enforcing any of the rules of this Code. (7-1-93)

f. All plats shall bear the signature of the Health Officer or his representative before filing. (7-1-93)

04. Vector Control. The Health Officer may require the control or eradication of any rodent, insect, or other arthropod on public or private property which is known to be a vector of human disease when the vector is present in sufficient numbers to represent a health hazard or public nuisance. (7-1-93)

301. -- 399. (RESERVED).

400. CRITICAL MATERIALS AT FIXED FACILITIES ON THE RATHDRUM PRAIRIE IN KOOTENAI COUNTY, IDAHO.

01. Purpose and Intent. The purpose and intent of this section is to provide agencies that are currently involved with emergency planning and emergency response duties and businesses with duties to report their handling of chemicals and other potentially hazardous materials, with a mechanism to meet the mandate of existing rules by facilitating channels of communication. It is also intended to aid in protection of the Rathdrum Prairie Aquifer in Kootenai County, designated as a sole source aquifer by the United States of America, from potential sources of contamination from materials handling and storage at facilities located over or adjacent to the Aquifer. The rules strive to achieve such protection through proper use of secondary containment systems at Fixed Facilities that use, store, manufacture or handle Critical Materials. Reporting these chemicals to the concerned agencies will facilitate coordination among industry, government agencies and response personnel so that they may more successfully meet the requirements of the following: (7-1-93)

a. Title III of the Superfund Amendments and Reauthorization Act of l986 (SARA III). (7-1-93)

b. ~~*Article 80 of*~~ The ~~*Uniform*~~ International Fire Code~~ *(UFC)*~~. ~~*(7-1-93)*~~(____)

c. ~~*Chapter 9 of*~~ The ~~*Uniform*~~ International Building Code~~ *(UBC)*~~. ~~*(7-1-93)*~~(____)

d. Local building, planning and zoning codes applicable to lands which overlie the Aquifer. (7-1-93)

e. Any applicable rules administered by any other state, federal or local agency which has jurisdiction over matters related to Critical Materials. (7-1-93)

02. Definitions. The following terms shall be construed throughout this Section in a manner consistent with the following definitions: (7-1-93)

a. Container. Any vessel used to hold critical materials. A single container is one not connected to any other container by way of valves, piping, etc. (7-1-93)

b. Critical Material. Any liquid, semi-liquid, flowable, or water soluble solid that is listed on the most current Superfund Amendments and Reauthorization Act, Title III (SARA III) List of Lists published by the Office of Toxic Substances, U.S. Environmental Protection Agency, Washington, D.C. or is required by the U.S. Occupational Safety and Health Administration to have a material safety data sheet (MSDS). (7-1-93)

c. Critical Materials Compliance Certificate (CMCC). A certificate indicating compliance with the reporting and secondary containment requirements of this rule. (7-1-93)

d. Critical Materials Use Activity. Any undertaking that involves the use, storage, manufacture or handling of Critical Materials at a Fixed Facility above the secondary containment quantity set forth in this rule, or incorporated into this rule by reference. (7-1-93)

e. Director. The Director of Panhandle Health District 1 or his designee. (7-1-93)

f. Fixed Facility. Any established land use, building, dwelling, structure or site upon which or wherein a Critical Material Use Activity is conducted. (7-1-93)

g. Key Box. A durable, locked box that holds keys firefighters or other emergency personnel may use to gain entry into a structure. The key box shall be a type approved by the local fire chief pursuant to Section 10.209 of the Uniform Fire Code. (7-1-93)

h. Local Emergency Planning Committee (LEPC). A standing committee established by the Office of the Governor through the State Emergency Response Commission (SERC) to fulfill Emergency Planning and Community Right to Know requirements pursuant to SARA III. (7-1-93)

i. Material Safety Data Sheets (MSDS). Documentation required by OSHA to provide a description of the characteristics and potential hazards of a wide range of substances that are potentially Critical Materials. (7-1-93)

j. NFPA 704. The National Fire Protection Association's placarding system used to identify the health hazard, flammability, reactivity and potential to react with water of a particular substance. (7-1-93)

k. Secondary Containment Quantity. The quantity of a Critical Material that requires compliance with this rule. For those Critical Materials specifically listed in the SARA III List of Lists (or as otherwise noted) the following quantities of qualifying substances shall be subject to this rule: (7-1-93)

i. SARA Section 302 Extremely Hazardous Substances - ten (10) pounds in the aggregate, exclusive of solvent or other medium or, one hundred (100) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

ii. CERCLA Hazardous Substances (listed in 40 CFR 302, Table 302.4) - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

iii. SARA Section 313 Toxic Chemicals - one hundred (100) pounds in the aggregate, exclusive of solvent or other medium or, one thousand (1000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

iv. SARA Section 311 and 312 Chemicals (Not listed in the List of Lists) for which OSHA MSDS must be developed pursuant to OSHA Hazard Communication Standards - five thousand (5000) pounds in the aggregate, inclusive of solvent or other medium. (7-1-93)

l. Secondary Containment System. Site improvements and/or development criteria that are designed to isolate and prevent Critical Materials from entering the soil or surface or ground waters. (7-1-93)

m. Rathdrum Prairie Aquifer (Aquifer). The underground water source identified and designated under the authority of Section l424(e) of the Safe Drinking Water Act (PL 93- 523) (Federal Register, Vol. 43, No. 28 - Thursday, February 9, l978). (7-1-93)

03. Applicability. (7-1-93)

a. This rule shall apply to any person, firm, corporation, or government agency owning, operating, or proposing to locate, establish, or operate a Fixed Facility over the Aquifer or within a recognized Aquifer recharge area in Kootenai County, Idaho. Any Fixed Facility so located shall comply with the requirements of this rule prior to initiation of operation or engaging in any Critical Materials Use Activity, if established after the effective date of this rule. Fixed Facilities in operation or engaging in Critical Materials Use Activity on or before September 18, 1990 shall attain compliance by the threshold dates established herein. Every owner or operator of a Fixed Facility shall be required to show compliance with this rule by obtaining a Critical Materials Compliance Certificate appropriate for current operations. (7-1-93)

b. The following activities shall require a new application to the Panhandle Health District 1 to determine compliance with this rule: (7-1-93)

i. Establishing a new use that ~~*would*~~ could qualify as a Fixed Facility. ~~*(7-1-93)*~~(____)

ii. Remodeling, operating changes, or expansion of an existing Fixed Facility which would modify the type or quantity of Critical Materials Use Activity. (7-1-93)

iii. Changes in the location or method of use, storage, manufacture or handling of Critical Materials in any Fixed Facility. (7-1-93)

iv. A change in ownership or addition of new Critical Materials meeting the quantity thresholds established by this rule at a Fixed Facility. (7-1-93)

c. Any CMCC granted is specific to that action and the application filed therefore. Subsequent actions, meeting the criteria set by Subsection 400.03.b., shall require separate plan

reviews and approvals to obtain compliance. (7-1-93)

d. Fixed Facilities in existence prior to September 18, 1990, shall comply with reporting requirements established herein on or before one (1) year from September 18, 1990, and shall implement secondary containment systems, on or before three (3) years from September 18, 1990. Upon proper showing by an applicant that good cause exists, the director may authorize a compliance agreement which allows the applicant up to one (1) additional year to install secondary containment systems. (7-1-93)

e. All businesses over the Rathdrum Prairie Aquifer in Kootenai County are subject to inspection in order to determine if they are governed by this rule. ( )

04. Application Requirements of Fixed Facilities Engaged in Critical Materials Use Activities. Each applicant for a Critical Materials Compliance Certificate must provide: (7-1-93)

a. Sufficient information to allow the Director to determine the type, quantity, and physical state of all Critical Materials that are used, stored, manufactured, or handled at the Fixed Facility location. The Director may require the applicant to provide a complete list of Critical Materials present at the Fixed Facility. (7-1-93)

b. Sufficient information about the Fixed Facility to allow classification in accordance with the Standard Industrial Classification system of the U.S. Department of Commerce. (7-1-93)

c. Building plans and site development drawings showing compliance with the secondary containment requirements established by this rule. Such plans shall also provide confirmation that the secondary containment methods are compatible with the materials to be contained and that Critical Materials at the Fixed Facility are isolated from storm water or other surface waters on the site. The Director may require that any such plans be certified by a licensed engineer. The required building and/or site plans shall show at least the following: (7-1-93)

i. Location of Critical Materials in buildings and other designated site areas. (7-1-93)

ii. Location of Key Box if required by the local fire chief. (7-1-93)

iii. Location of NFPA 704 placards if required by the local fire chief. (7-1-93)

d. Proof of contact and resultant acknowledgment from the agencies named below which have codes, standards, and/or rules which must be met by the applicant with respect to handling of Critical Materials. The Director will designate the agencies needing contact for each Fixed Facility based upon information provided by the applicant. (7-1-93)

i. Local Fire Department. (7-1-93)

ii. Local Emergency Planning Committee. (7-1-93)

iii. Kootenai County Department of Planning and Zoning. (7-1-93)

iv. Kootenai County Building Department. (7-1-93)

v. Applicable City Building Department. (7-1-93)

vi. Applicable City Planning and Zoning Department. (7-1-93)

vii. Bureau of Pesticides, Department of Agriculture. (7-1-93)

ix. Department of Environmental Quality. (7-1-93)

x. Idaho Department of Water Resources. (7-1-93)

e. An opportunity for Panhandle Health District 1 to perform an inspection to assure compliance with secondary containment criteria previously approved through the plan review. If approved, and the agency review and reporting checklist (Subsection 400.04.d.) has been completed, a CMCC will be issued. The Director may delegate site inspection duties to officials of a cooperating agency. (7-1-93)

f. Payment of the review fee for CMCC issuance established by Resolution of the Board in order to reimburse costs of administering the Critical Materials program. (7-1-93)

05. Performance Standards for Fixed Facilities. Each Fixed Facility, as defined in this rule, shall conform to the following performance standards: (7-1-93)

a. Shall construct and maintain a secondary containment system for all Critical Materials. Said secondary containment system shall be designed to prevent infiltration of any Critical Materials into the ground in the event that they are released from their original storage containers. (7-1-93)

b. The secondary containment system and methods must be non-reactive and resistant to the materials to be contained and must isolate the Critical Materials at the Fixed Facility from storm water, other surface waters on the site, and from reactive critical materials present in the same Fixed Facility. (7-1-93)

c. Secondary containment systems must be sized to contain at least one-hundred and ten percent (110%) of the volume of the largest container, or ten percent (10%) of the aggregate volume of all containers, whichever is greater, in any containment area within a Fixed Facility. (7-1-93)

d. The owner or operator of any Fixed Facility shall report the presence of any Critical Materials Use Activities to the responsible local, state, and federal agencies as required by statutes, rules, and provisions of this rule. (7-1-93)

e. Any spilling, leaking, emitting, discharging, escaping, or leaching of any Critical Material into the secondary containment system or the environment must be reported to Panhandle Health District 1 or the local fire department immediately upon discovery of the release. (7-1-93)

f. Should conflict arise among the applications of local, state rules, and federal regulations regarding Critical Materials Use Activities, the rule that provides the greatest degree of protection to the Aquifer shall prevail, except where legal preemption of regulatory authority by state or federal agencies may require application of a different standard of protection. (7-1-93)

g. Each Fixed Facility shall be subject to biennial inspection to verify continued compliance with these rules. A fee for such inspection may be set by the Board. (____)

06. Violation. Any owner or operator of a Fixed Facility shall be deemed to have violated this rule if: (7-1-93)

a. A Fixed Facility is operated or if Critical Materials Use Activities are conducted on any site without first procuring a Critical Materials Compliance Certificate or if changes are made to Critical Materials Use Activities at a Fixed Facility as set forth in Section 400.03.b. without reapplying for a CMCC for the Fixed Facility. (7-1-93)

b. An owner or operator of a Fixed Facility submits knowingly false or incomplete reports to the Panhandle Health District or other responsible agencies or officials concerning the nature or quantity of Critical Materials present at a Fixed Facility governed by this rule. (7-1-93)

c. An owner or operator fails to implement or maintain secondary containment of Critical Materials at a Fixed Facility as required by this rule. (7-1-93)

d. An owner or operator fails to comply with time and reporting standards for any Critical Materials Use Activities or fails to report any discharge of Critical Materials into the secondary containment system required by this rule. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

511. CONTAMINANT MANAGEMENT RULES IN THE BUNKER HILL SUPERFUND SITE OPERABLE UNIT #3 INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA, SHOSHONE AND KOOTENAI COUNTIES, IDAHO

01. Purpose. The purpose of these Rules is to ensure that activities associated with excavation and grading such as infrastructure development and maintenance; building construction and renovation; and land development, redevelopment and/or modification within the Institutional Controls Administrative Area of the Bunker Hill Superfund Site Operable Unit #3 (OU-3) provide for the construction and maintenance of Contaminant Barriers and implementation of other Contaminant management requirements to preclude the release and migration of Contaminants as necessary to protect the public health and the environment. It is imperative that current and future development and construction activities proceed in a manner which minimizes the release of Contaminants into the environment to minimize exposure to Area residents, communities, to workers involved in Area project work, and to environmental receptors. Further, it is the purpose of these Rules to complement existing land use regulations

and permitting processes, and to provide a screening process to determine whether proposed activities are subject to these Rules. These Rules will rely upon procedures and provisions applicable to the Institutional Controls Program set forth in Section 500 of these rules. Differences identified in Sections 511 and 512 of these rules, shall be deemed applicable only to the lands encompassed by OU-3. ( )

02. **Implementation Policy and Standards**. Implementation policy and standards which pertain to the interpretation and enforcement of these Rules or to the documentation of compliance with these Rules have been developed by PHD and are available for inspection and/or copying at cost at the PHD office, 114 West Riverside Avenue, Kellogg, Idaho. ( )

03. **Administrative Appeals**. Persons may be entitled to appeal final PHD actions authorized under this chapter, pursuant to IDAPA 04.11.01, "Idaho Rules of Administrative Procedure of the Attorney General." ( )

04. **Definitions**. The following terms shall be construed throughout Sections 511 and 512 of these rules, in a manner consistent with these definitions: ( )

a. Agricultural Land. Land used for pasturing animals or for cultivation and production of agricultural crops including conservation reserve activities. ( )

b. Applicant. Any person, contractor, public utility, government or other entity that is required to apply for an Institutional Controls Program (ICP) Permit. ( )

c. Access Restrictions. Physical barriers such as fences, barricades, curbs, barrier rocks, trenches, etc. that provide restricted access by vehicles, pedestrians, and animals to contaminated areas. ( )

d. Barrier. Any physical structure, material or mechanism which acts to break the pathway between Contaminants and human receptors, including but not limited to soil, crushed aggregate/gravel, asphalt and Portland cement concrete, fences, access restrictions, or other structure or covering which separates Contaminants from contact with people or keeps Contaminants in place. ( )

e. Board. The Board of Health of the Idaho Public Health District No. 1. ( )

f. B.O.P. Barrier Option Plan, a plan which will be provided by an Applicant, when required, that sets forth the location and type of Barrier which the Applicant intends to construct as part of the permitted work. ( )

g. Building Construction. Construction activity to be performed for any new structure involving disturbance of soil in excess of one cubic yard. ( )

h. Building Renovation. Construction activity to be performed on any existing structure involving ceiling or insulation removal, work in dirt crawl spaces or basements, or disturbance of soil in excess of one cubic yard. ( )

i. CERCLA. Comprehensive Environmental Response, Compensation, and Liability

Act. ( )

j. Commercial Property. Retail, wholesale and secondhand businesses; public and common use areas; public buildings; and undeveloped properties accessed by a maintained road or street and zoned for commercial development as of the date of promulgation of these Rules. ( )

i. Type I. Commercial Property predominantly used by Sensitive Populations (e.g. daycare facilities, municipal parks, playgrounds, etc.) ( )

ii. Type II. All other Commercial Property. ( )

k. Contaminants. Soil or other material containing, or likely to contain, concentrations of lead equal to or greater than one thousand (1000) ppm or concentrations of arsenic equal to or greater than one hunderd (100) ppm. ( )

l. Developed Recreation Area. Commercial and public recreation areas containing constructed features such as boat ramps, picnic areas, and campgrounds outside the city limits of incorporated communities in the Coeur d'Alene River corridor as defined in Subsection 512.0.5.s. of these rules. The Developed Recreation Areas of the Trail of the Coeur d'Alenes includes all constructed trail surfaces, stop and views, oases (rest stops) and trailheads, exclusive of all undeveloped areas within the trail right of way. ( )

m. Director. The Director of the Idaho Public Health District No. 1. ( )

n. Disposal. The placement of Contaminants into an authorized repository. ( )

o. Environmental Office. PHD office in Kellogg, ID. ( )

p. Excavation – Any digging, breaching or disruption of soil not including cultivation of Agricultural Lands and gardens or mining activities regulated under other state and federal programs which may release or expose Contaminants to the environment. ( )

q. Health Officer. The Director or designee. ( )

r. Hearing Officer. An attorney, engineer or other professional trained in conducting hearings, appointed by the Board for purposes of conducting hearings authorized by these Rules. ( )

s. Institutional Controls Administrative Area. The Area designated by the Administrative Area Map in Appendix 2 which includes areas of mining, milling, and smelting related contamination in the South Fork of the Coeur d'Alene River corridor from its headwaters to the confluence with the North Fork Coeur d'Alene River and from the confluence of the North and South Fork to the mouth of the River and its confluence with Coeur d'Alene Lake including adjacent floodplains, tributaries, and fill areas. The Area also includes the Trail of the Coeur d'Alenes inside and outside the administrative boundary indicated on the map in Appendix 2 except that portion within the exterior boundaries of the Coeur d'Alene Indian Reservation. The Area does not include any area within OU-1 and OU-2 (Box) which has a separate ICP, or any

other area excluded under this rule. The Area also includes areas in the Coeur d'Alene River corridor, as defined above, outside the administrative boundary indicated on the map in Appendix 2 where testing has verified that Contaminants related to mining, milling, and smelting have come to lie and remediation is required. ( )

t. ICP. The Institutional Controls Program for the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. ( )

u. ICP Permit. The Contaminant management authorization for projects subject to these Rules. ( )

v. Infrastructure. Facilities such as trails, roads, streets, highways, bridges; storm water, drinking water, and wastewater systems; flood prevention systems including dikes and levees; and utilities including electrical power and natural gas systems. ( )

w. Large Project. A project where one cubic yard or more of soil containing Contaminants is disturbed or removed. Large Projects include, but are not limited to, infrastructure construction and maintenance, building construction, renovation, and demolition, land development or any change in the use of land that may result in the release or migration of Contaminants. ( )

x. Owner. Any person, partnership, or corporation having ownership, title, or dominion over property for which an ICP permit is required. ( )

y. PHD. The Idaho Public Health District No. 1 (also the Panhandle Health District). ( )

z. PUD. Planned Unit Development. ( )

aa. Record of Compliance. The record maintained by the PHD pursuant to Section 523 of these rules for Small Projects. ( )

bb. Release. Any excavation, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, dumping, or disposing of Contaminants into the environment. ( )

cc. Residential Property. Property used by private individuals or families as a residence, and undeveloped properties accessed by a maintained road or street and zoned for residential development as of the date of promulgation of these Rules. ( )

dd. Sensitive Populations. Pregnant women and children up to twelve (12) years old. ( )

ee. Small Project. A project where less than one (1) cubic yard of soil containing Contaminants is disturbed or interior work that is not Building Renovation. ( )

ff. Trail of the Coeur d'Alenes. All Developed Recreation Areas and undeveloped areas within the former Union Pacific Railroad Mullan and Wallace Branch right of way. ( )

gg. Working day. Monday through Friday, but shall not include any legal holiday recognized as such by the State of Idaho. ( )

05. **Statement of Intent**. It is the intent of the PHD to work with local governments, the State of Idaho, the United States Environmental Protection Agency, Federal Land Management Agencies (Bureau of Land Management, USDA Forest Service), Coeur d'Alene Tribe, and private parties in managing Contaminants within the regulated Institutional Controls Administrative Area by way of an ICP. These Rules establish standards for Barrier construction and maintenance, and other Contaminant management practices. These Rules do not address financial liability for Contaminant management resulting from a failure of a CERCLA remedy due to a natural disaster. These Rules govern management of Contaminants by: ( )

a. Requiring ICP permits and requiring barriers for certain construction and excavation activities; ( )

b. Licensing contractors, utilities, and state and local government entities which may disrupt or construct Barriers, or otherwise disturb Contaminants; ( )

c. Adopting performance standards; ( )

d. Inspecting for project compliance as required; ( )

e. Regulating the movement and disposal of Contaminants; ( )

f. Making it unlawful to knowingly disrupt a barrier in a fashion likely to expose persons or the environment to Contaminants; ( )

g. Maintaining records of ICP activities. ( )

06. **Additional Provisions by PHD**. In conjunction with these Rules it is the intent of the PHD to provide, depending on project size and complexity and at the discretion of PHD: ( )

a. Technical assistance and soil testing; ( )

b. Health screening and intervention; ( )

c. Readily available repositories for disposal of Contaminants; ( )

d. Clean material to restore Barriers for Small Projects; ( )

e. Disposal containers for Small Projects to assist in removal, transportation and disposal of contaminated soil; ( )

f. Health and safety information and education to licensees and the public; ( )

g. Sheet plastic, crushed aggregate and gravel, or other items as appropriate; ( )

h. A database tracking system to assist the public, lenders, and prospective purchasers of property within the Institutional Controls Administrative Area; ( )

i. Guidelines for managing Contaminants. ( )

512. APPLICATION OF REGULATIONS; INSTITUTIONAL CONTROLS ADMINISTRATIVE AREA.
These Rules shall apply to the Institutional Controls Administrative Area as defined in Subsection 511.05.s. of these rules. These Rules shall not apply to the direct operations of the United States Environmental Protection Agency including directing, supervising, and inspecting project work or on lands owned or otherwise under the jurisdiction, custody and control of the Coeur d'Alene Tribe or the Federal Land Management Agencies such as the USDA Forest Service and the Bureau of Land Management. These Rules shall not apply to the Union Pacific Railroad or its contractors when conducting activities within the Trail of the Coeur d'Alenes pursuant to the requirements of the Consent Degree entered August 25, 2000 by the United States District Court for the District of Idaho (Case Nos. 91-0342 and 99-606). ( )

01. Standards Adopted. ( )

a. Except as otherwise provided in Section 512 of these rules, contaminant management is required on all properties within the Institutional Controls Administrative Area including properties that have been remediated; properties tested and scheduled for remediation; properties not yet tested; and properties testing below action levels in the top eighteen (18) inches where Large or Small Projects may disturb Contaminants below eighteen (18) inches in excess of one thousand (1000) ppm lead or one hundred (100) ppm arsenic. Contaminant management may include testing of untested areas by the Applicant; testing of deep soils (below eighteen (18) inches) by the Applicant where a project may result in deep excavations; and replacement and repair of remediation Barriers in accordance with Subsection 512.02 of these rules; or other management activities. Contaminant Management on Residential Properties and Commercial Properties existing as of the date of promulgation of these Rules and requiring remediation, but not yet remediated will not require construction of final barriers in accordance with Subsection 512.02 of these rules, by the owner, but may require dust, erosion, health and safety and temporary cap controls to prevent further migration onto lands of others. Final barrier construction will be the responsibility of the state of Idaho and United States Environmental Protection Agency if needed. Applicant performed soil testing will be conducted consistent with sampling and analytic procedures developed by PHD. ( )

b. Developed Recreation Areas with surface soil containing lead concentrations greater than seven hundred (700) ppm lead and one hundred (100) ppm arsenic shall be capped pursuant to Subsection 512.02.c. of these rules. ( )

c. Agricultural and undeveloped land within the Institutional Controls Administrative Area are exempt from these Rules unless excavation and grading activities such as soil transport off site or development by the owner or his/her agents on these lands is likely to result in the release or migration of Contaminants from these lands to adjacent non-agricultural or undeveloped areas. ( )

d. All Barriers existing or hereinafter constructed shall be maintained and protected to original construction specifications. ( )

e. No new PUD or subdivision containing concentrations of Contaminants exceeding one thousand (1000) ppm lead or one hundred (100) ppm arsenic shall be developed without Contaminant management. ( )

f. No person shall conduct, except in accordance with these Rules, any activity within the Institutional Controls Administrative Area which breaches a Barrier, may breach a Barrier, or disturbs the same, or otherwise results in a threat to public health or the environment from the migration of Contaminants through tracking on tires or vehicles, visible airborne dust, excavation, transport, disposal, renovation, demolition, or run-on or run-off from stormwater or in any other manner on properties tested and requiring remediation and on properties not yet tested within the Institutional Controls Administrative Area ( )

02. Barriers; Construction and Maintenance Required. ( )

a. The minimum Barrier construction requirements for Residential and Type I Commercial Properties are as follows: ( )

i. All soil which contains lead equal to or in excess of one thousand (1000) ppm or arsenic equal to or in excess of one hundred (100) ppm and lies within twelve (12) inches of the final grade shall be removed and replaced with replacement material meeting the requirements of Subsection 512.02.d. of these rules. ( )

ii. Any such property with unrestricted access to an adjacent property not meeting the requirements of Subsection 512.01.a. of these rules, shall restrict access to such adjacent property. ( )

b. The minimum Barrier construction requirement for Type II Commercial Properties is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ( )

c. The minimum Barrier construction requirement for Developed Recreation Areas is a six (6) inch soil with vegetative cover barrier or six (6) inch crushed rock/gravel barrier or asphalt/Portland cement concrete cap. Excavation may be necessary for the installation of barriers to maintain grade or drainage requirements. ( )

d. All twelve (12) inch deep Barriers of soil or crushed rock/gravel required pursuant to the ICP which overlay soils having concentrations of lead equal to or greater than one thousand (1000) ppm or arsenic concentrations equal to or greater than one hundred (100) ppm shall have an underlying visual delineator at the twelve (12) inch depth. Visual delineators are not required if the soil underlying the Barrier has tested under one thousand (1000) ppm lead and one hundred (100) ppm arsenic. Cap Barriers such as Portland cement and asphalt concrete do not require delineators. ( )

e. Soil and crushed aggregate/gravel imported for barrier material shall contain less

than one hundred (100) ppm lead, thirty five (35) ppm arsenic and five (5) ppm cadmium based on average of backfill sampling results. No single sample of replacement materials shall exceed one hundred fifty (150) ppm lead or forty five (45) ppm arsenic. ( )

f. Barriers shall be maintained and repaired to original construction specifications. ( )

g. Contaminated waste material generated in the construction, maintenance and repair of Barriers shall be disposed of in designated repositories or as directed by PHD. ( )

03. ICP Permits Required. ( )

a. Permits shall be required for Large Projects and Building Renovations. ( )

b. A permit is required for a project which changes the use of a property containing Contaminants. A new Barrier or additional or more substantial Barrier may be required unless waived by the PHD. ( )

c. A single annual permit covering a specific list of projects may be obtained from the PHD by entities eligible under Section 531 of these rules, at the beginning of each year's construction season. ( )

51~~1~~3. -- 519. (RESERVED).

520. PERMIT APPLICATION AND ADMINISTRATION.

01. Application for ICP Permit. Application for an ICP Permit shall be made in writing at the Kellogg office of the District. Application shall be on forms provided by the District. (3-20-97)

02. Required Applicant Information. All Applicants shall provide the following information when applying for an ICP Permit with the District: (3-20-97)

a. Name, address and telephone number of the Applicant and the property owner. (3-20-97)

b. Location of the work and whether the work is being done on private or public property, or both. (3-20-97)

c. Description of work. The description must include methods of handling or storing, and transporting contaminated materials. A site plan may be required by the District if one has not been provided pursuant to the permit process. (3-20-97)

d. Dates work will be started and completed. (3-20-97)

e. Such other information as the District shall require. (3-20-97)

03. District Requirements for Projects. If the work is to be performed within the

jurisdiction of a city or county government which has not adopted standards and a permitting process consistent with these rules, the District may require, as appropriate for a particular project, the following: (3-20-97)

a. Large Projects: (3-20-97)

i. Name, signature, license number, seal and address of engineer, geologist, land surveyor, architect, professional planner, landscape architect, or contractor as applicable, involved in preparation of the application or any materials or documents pertaining thereto; ~~(3-20-97)~~(_____)

ii. Copies of other government authorizations, permits or permit applications (i.e. County or City) and the supporting documents and materials pertaining thereto; ~~(3-20-97)~~(_____)

iii. A key map showing location of tract with reference to surrounding properties including owners, streets and city boundaries; (3-20-97)

iv. Existing and/or proposed zoning; (3-20-97)

v. North arrow and scale; (3-20-97)

vi. Site plan showing dimensions, boundaries, existing and/or proposed structures; (3-20-97)

vii. Date of current property survey; (3-20-97)

viii. Standardized sheet size; (3-20-97)

ix. Copies of existing and/or proposed restrictions or covenants; (3-20-97)

x. List of ordinance variances required or requested (PHD or local government); (3-20-97)

xi. Requested or obtained design waivers or exceptions; (3-20-97)

xii. Payment of fee; (3-20-97)

xiii. Identification of surrounding water courses, flood plains (floodway and one hundred (100) year floodplain), wetlands, and environmentally sensitive areas on-site and within two hundred (200) feet; (3-20-97)

xiv. Soil information as required to determine levels of contamination; (3-20-97)

xv. Location and description of all existing Barriers on-site and bordering the site; (3-20-97)

xvi. Barrier Option Plan, as required; (3-20-97)

xvii. Existing rights-of-way and/or easements on and adjacent to the tract (i.e. streets, utilities); (3-20-97)

xviii. Existing and proposed contour intervals based on U.S.G.S. datum, contours to extend fifty (50) feet beyond the project site borders (additional distance may be required in the case of subdivisions, PUD's and special use permit situations), contour intervals shall be as follows: for sites with ~~grades~~ slopes of less than three percent (3%) - one (1) foot intervals; for sites with ~~grades~~ slopes of three percent (3%) to ten percent (10%) - two (2) foot intervals; for sites with ~~grades~~ slopes over ten percent (10%) - five (5) foot intervals; ~~(3-20-97)~~(____)

xix. Existing system of site drainage and of any larger tract or basin of which the site is a part; (3-20-97)

xx. Drainage calculations; (3-20-97)

xxi. Existing and proposed utility infrastructure locations; (3-20-97)

xxii. Locations of existing and/or proposed activities on-site (i.e. lawn, garden, landscaping areas, pathways, driveways, storage areas, structure locations, etc.); (3-20-97)

xxiii. Soil erosion and sedimentation control plan if surface is to be disturbed; (3-20-97)

xxiv. Dust control plan if surface is to be disturbed; (3-20-97)

xxv. Plan for transporting Contaminants, means for transportation, proposed disposal site, and proposed route; (3-20-97)

xxvi. Access control plan for construction period; (3-20-97)

xxvii. Construction schedule; (3-20-97)

xxviii. Contractor bonding information; (3-20-97)

xxix. Health and safety plan. (3-20-97)

b. Building Renovations: (3-20-97)

i. Name, signature, license number, seal and address of engineer, land surveyor, architect, professional planner, landscape architect or contractor, as applicable, involved in preparation of the application or any materials or documents pertaining thereto; ~~(3-20-97)~~(____)

ii. Type of contaminated material to be handled (i.e. soil, insulation etc.); (3-20-97)

iii. Dust control plan; (3-20-97)

iv. Access control plan; (3-20-97)

v. Worker precautions (health and safety plan); (3-20-97)

vi. Transportation information, including means, method of containment of material, and proposed disposal site; (3-20-97)

vii. Contractor bonding information; (3-20-97)

viii. Construction schedule. (3-20-97)

04. Use of Discretion on Requirements by District. The District may, at its own discretion, waive certain application requirements or information, or require additional or alternative actions or information, depending upon the type and extent of the project and conditions encountered. In no instance shall a waiver violate the intent of this rule and/or the Record of Decision for the relevant Operable Unit. ~~(3-20-97)~~( )

05. Site Inspection or Waiver When Permit Required. Work which requires a permit shall not commence until a site inspection has been made or waived by the District and a permit has been issued. (3-20-97)

06. Time Specifications. The permit shall provide that all work be completed and the permit shall be void if work is not commenced and completed within the times specified for the type and kind of permit as approved by Resolution of the Board. An extension of time may be granted by the District upon a showing of good cause. (3-20-97)

07. Other Inspections and Requirements. All permits granted pursuant to this Rule remain subject to such other inspections and requirements prescribed by state or local governments. (3-20-97)

08. Work Involving Public Right-of-Way. If the permit involves work within any public right-of-way, the appropriate agencies ~~will~~ must be notified of the work by the entity receiving the permit. ~~(3-20-97)~~( )

(BREAK IN CONTINUITY OF SECTIONS)

522. PERMIT REVOCATION OR STOP WORK ORDER.
Any Permit may be revoked or a Stop Work Order may be issued, without notice by the District, for non-compliance with or violation of any of the provisions of this chapter or any requirement or limitation of the Permit. If a Permit is revoked, the District may take such steps as are necessary to eliminate any danger from contamination, including completion of work by the District. The Applicant, contractor and/or Owner may be required to pay all costs and expenses for abatement of any danger and/or completion of the project, including legal fees incurred by the District to obtain compliance. The District will endeavor to provide written notice, but reserves the right to act summarily to protect public health and the environment. ~~(3-20-97)~~( )

523. RECORD OF COMPLIANCE.
A Record of Compliance for Small Projects which documents compliance with the performance

standards established by these rules will be entered into the database tracking system based upon an inspection requested of PHD by the property owner or tenant. The Record signifies the property owner or tenant was informed of and provided with applicable performance standards and guidelines and materially complied with the same. ~~(3-20-97)~~(____)

524. -- 529. (RESERVED).

530. CONTRACTOR LICENSING.

01. License Required. Any contractor performing Large Projects, Building Renovation or transportation or disposal of Contaminants within the Site or the Institutional Controls Administrative Area which is likely to expose the contractor, workers or others to Contaminants, must be licensed by the District. There will be no charge for a contractor's license. It shall be unlawful for a contractor to work on a project requiring an ICP permit without a current contractor's license issued by PHD. A contractor's license will not be required of an owner working on his or her own property. ~~(3-20-97)~~(____)

02. Training. In order to obtain a contractor's license from the District, the Contractor must have those supervisors involved in activities dealing with Contaminants participate in training approved by the District and pass an annual examination focusing on the reasons for, and methods of, controlling Contaminants. The purpose of the examination is to assure that all of the Contractor's employees are aware of and observe the procedures and standards that will protect themselves and the public from the Contaminants. The District will create and administer the test. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. (3-20-97)

03. Bonding. Any contractor whose license has been revoked by the District within the past three (3) years must, as a condition of reinstatement and maintaining the status of a licensed contractor, be bonded in the minimum amount of two-thousand dollars ($2000). Said bond shall be at least five percent (5%) of the cost of any contract the contractor is engaged in whichever is greater. Said bond shall be in a form approved by the District and must be suitable to insure payment for completion of Barrier work not completed by the Contractor. A cash deposit or other security acceptable to the District may be utilized in lieu of a bond. The District may establish a bonding program for all contractors, if deemed necessary to carry out these Rules. ~~(3-20-97)~~(____)

04. Suspension or Revocation of License. (3-20-97)

a. Upon a showing that a licensee has violated any provision of these Rules, or has violated any other health or building code within the boundaries of the Site or Institutional Controls Administrative Area, suspension or revocation of license may be imposed. Suspension may be made by any District health officer. Revocation may be made by the Director upon recommendation of the District health officer. Notification of suspension or revocation must be in writing. No suspension may be made for more than thirty (30) days without approval of the Director. Revocation of license may be made by the Director upon a showing of good cause. ~~(3-20-97)~~(____)

b. Appeal. Suspension or revocation may be appealed by the licensee to the Board in writing within thirty (30) days of receipt of notice of suspension or revocation. Appeal shall stay the suspension or revocation unless the Director makes a finding that such stay is likely to present a health risk to a person or persons. Appeals shall follow the procedures set forth in Section 020 of these rules. (3-20-97)

c. Any decision by the Board pertaining to a suspension or revocation of a license shall be made only after a licensee has been accorded an opportunity for hearing at which the licensee has a right to appear and be heard, to be represented by counsel, to testify, to present evidence, to call witnesses and to rebut any evidence presented. A transcribable recording of all such hearings shall be made and retained for at least six (6) months. Such hearing may be conducted by a hearing officer designated by the Board or by the Board itself. (3-20-97)

d. If a license is revoked, the contractor may, upon payment of any cleanup or remediation costs related to past work, reapply for reinstatement of license after one (1) year, however, a contractor whose license has been revoked may not obtain a new license under a different corporate or partnership status until this provision is satisfied. (3-20-97)

531. LICENSES FOR PUBLIC UTILITIES AND GOVERNMENT ENTITIES.
Upon a demonstration that supervisory employees of a public utility or government entity (city, county, special purpose district, or state of Idaho) have participated in an education program approved by, or provided by, the District, a utility company or government entity may receive an annual license which will allow their employees to ~~*make Excavations*~~ perform excavation and grading operations without obtaining individual ~~*Contaminant management*~~ ICP permits. This license may be granted by the District and will require that the utility comply with performance standards and all other regulations contained herein or adopted by Resolution of the Board. All supervisory employees involved in and responsible for excavation~~*s*~~ and grading operations shall have participated in a District approved education program. The trained supervisor must pass information on to employees as is necessary to protect their health and safety and assure compliance with these rules. The District will provide training which owners and employees may participate in. Entities licensed under this section shall maintain a log of all excavations and grading operations on a form approved by the District. Such logs ~~*will*~~ shall be forwarded to the District on a regular basis determined by the District. All licensees shall telephone the Shoshone or Kootenai County one-call locating service, as appropriate, prior to any excavation or grading operations. Licenses shall be renewed annually upon a showing that the utility or government entity has operated in compliance with this rule. This license may also be revoked as provided in ~~*the prior*~~ Subsection 530.04. ~~*(3-20-97)*~~(____)

532. -- 539. (RESERVED).

540. PERFORMANCE OF WORK.

01. Completion of Work. All work done pursuant to an ICP Permit shall be completed in a neat and workmanlike manner and so scheduled as to cause the minimum interference with traffic or public use (if applicable) and a minimum dispersal of Contaminants. (3-20-97)

02. Work Delayed by Applicant. If the work is unduly delayed by the Applicant, and

if the public interest reasonably so demands, the District shall have the authority, upon twenty-four (24) hours' written notice to the ~~*permittee*~~ Applicant, to complete the work to the extent that the Barrier is restored and any hazardous material covered or removed. The actual cost of such work by the District (including legal fees), plus fifteen percent (15%) as an overhead charge, shall be charged to and paid by, the Applicant and/or the Owner. ~~*(3-20-97)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

542. APPROVAL OF ALTERNATIVE STANDARDS.
Any person aggrieved by the substantive requirements of these rules or the performance standards, may appeal these requirements by providing a written request for approval of an alternative standard. The appeal shall be accompanied by an engineering report indicating why the appealing party should be relieved of the requirement for compliance or why the requested alternate standard is appropriate. At the Applicant's expense, the District may consult with its own engineer to confirm the applicability of these ~~*regulations*~~ rules to the proposed project. The District health officer may approve an alternate standard where such approval does not jeopardize the public welfare or existing Barriers. The decision of the District health officer shall be in writing, stating the reasons therefor~~e~~. ~~*(3-20-97)*~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

~~***544. -- 549. (RESERVED).***~~

Section 550 has been moved and renumbered to Section 901

~~***551. -- 559. (RESERVED).***~~

Section 560 has been moved and renumbered to Section 902

~~***561 -- 569. (RESERVED).***~~

~~***570. EFFECTIVE DATES.***~~

~~***01. Temporary Rule Effective Date****. The Board, finding that these rules are necessary to protect the public health, safety and welfare, passes these rules as temporary rules pursuant to section 67-5226, Idaho Code, and these rules, except as otherwise provided, shall be effective April 17, 1995.* *(3-20-97)***~~

~~***02. Other Effective Date****. Any rule applicable to licensing of contractors, public utilities and government entities shall be effective as of January 1, 1996.* *(3-20-97)***~~

5~~*71*~~44. -- 899. (RESERVED).

900. ADMINISTRATIVE PROCEDURES, EXCEPTIONS, PENALTIES~~, AND ENFORCEMENT~~.

01. Responsibility of Permit Applicant. It shall be the responsibility of any person applying for, or required to apply for, a permit required by this Code, to show affirmatively, by all reasonable means, that his undertaking complies with this Code or with any related rules, statutes, or ordinances. (7-1-93)

02. Permit Revocation. Any permit or permission, actual or implied, granted by the Health Officer or his predecessors may be revoked, for cause, by written notice sent to the permit holder or his agent. Any person, association, or corporation who continues to act under such permit or permission actual or implied, more than ten days after the sending or delivery of notice of revocation shall be presumed to be in violation of this code and subject to the penalties provided herein. (7-1-93)

03. Variance Standards. A variance may be granted only upon an affirmative showing by an applicant that ~~the~~ a unique and undue hardship is caused by a physical characteristic of a site that is not of the applicant's making and that approval of the variance would not be contrary to the public interest or to the purposes of the Code. ~~(7-1-93)~~(____)

04. Variance Procedures. (7-1-93)

a. An applicant for a variance shall obtain a Variance Application Form from Panhandle Health District 1 and, after completing the application form, shall return the application to the Environmental Office. The Variance Application shall require the applicant to provide, in addition to information required by the application form itself, the following: (7-1-93)

i. An accurate site plan showing development of the site in question, present and proposed, depicting all features relevant to the variance request. The Director, or his designee, shall identify information necessary to proper processing of the request if information other than that normally required must be supplied. The applicant shall describe the current and proposed use of the site in question. (7-1-93)

ii. A narrative statement addressing the efforts, including consideration of design alternatives, which the applicant has undertaken to comply with the rule from which a variance is sought. (7-1-93)

iii. A narrative statement explaining the nature of the hardship, if any, imposed by literal compliance with the rule in question. (7-1-93)

iv. A narrative statement explaining the effects of the requested variance on the interests of adjoining landowners and/or of the public at large. (7-1-93)

v. A narrative statement detailing what use could be made of the site in question if the requested variance were not granted. (7-1-93)

b. The completed Variance Application shall be returned to the Environmental Office

accompanied by an ~~*fifty dollar ($50)*~~ initial filing fee as established by the Board. The completed application shall be submitted to the Panhandle Health District 1 Hearing Officer who shall determine whether, on its face, it sets forth a colorable claim for a variance from the Code. If the Hearing Officer determines that the application does not set forth a colorable claim for variance, he shall return the application to the applicant with a written explanation of the action taken. Said initial determination and the accompanying explanation shall be forwarded to the Board which shall act upon the Hearing Officer's initial determination by affirming it or remanding it to the Hearing Officer for further proceedings. ~~*(7-1-93)*~~(____)

c. If the Hearing Officer determines that the application presents a colorable claim for a variance, he shall return the application to the Environmental Office with instructions to prepare a notice of public hearing concerning the requested variance. The applicant shall pay an additional processing fee ~~*of one hundred and fifty dollars ($150)*~~ if the Hearing Officer makes such a finding. Said fee may be adjusted as with all other Panhandle Health District 1 fees in accordance with a sliding scale coordinated with Federal poverty standards. (7-1-93)

d. The Environmental Office staff shall notify the applicant that his application has passed the initial screening and that the names and mailing addresses, on self-adhesive labels, of all owners of land located within three hundred (300) feet of the external boundaries of the site in question must be provided. Said names shall be provided or checked by a land title company or other business whose commercial purpose it is to provide such information. The applicant shall be solely responsible for the accuracy of such information. (7-1-93)

e. Using the mailing list provided by the applicant, notice of public hearing shall be sent by first class mail and posted on the site in question in a conspicuous manner. The Environmental Office shall maintain records verifying completion of the notification process. Mailing and posting shall be accomplished at least fifteen (15) days prior to the date of the hearing established by the Hearing Officer. (7-1-93)

f. Upon the appointed date, the Hearing Officer shall conduct a public hearing concerning the variance request. The applicant, Panhandle Health District 1 staff, interested members of the public, and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record in order that they may be associated with the taped record of the hearing. (7-1-93)

g. Upon completion of the hearing and compilation of the record in each application, the Hearing officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer may recommend that the application be approved, be approved with conditions, or that the application be disapproved. His recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (7-1-93)

h. At its next regular meeting, or as soon as the application can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing by the Board. The Board may accept the recommendation of the Hearing Officer, may reverse the recommendation, or may modify the

recommended decision for reasons to be found in the record. If the Board modifies or reverses the Hearing Officer's recommendation it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearings to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of Section 39-418, Idaho Code. (7-1-93)

~~***05.*** ***Penalties****. Any person, association, or corporation who shall violate provisions of this rule may be penalized as follows:* *(7-1-93)*~~

~~***a.*** *Shall be subject to a penalty as set forth in Section 39-419, Idaho Code, or as otherwise provided by Section 39-117, Idaho Code. Each day of violation of a provision of this rule shall constitute a separate offense subject to cumulative punishment.* *(7-1-93)*~~

~~***b.*** *May be subject to a civil court judgment enjoining violation of the rule and such civil penalties, costs, and fees as may be necessary to compel compliance.* *(7-1-93)*~~

~~550~~901.APPEAL TO THE BOARD.
Any person, association, public or private agency or corporation aggrieved by application of a provision of these rules or by a decision of the Health Officer or the District may appeal to the Board pursuant to the provisions of Chapter 52, Title 67, and Chapter 4, Title 39, Idaho Code, and the following procedures: (3-20-97)

01. Filing Appeal. Any potentially affected party seeking relief under these rules must file such appeal or request to the Board in writing at the ~~*Kellogg*~~ office of the District in the county where regulated activity is undertaken within thirty (30) days of the Health Officer's or District's decision, or of such other action from which relief is sought. The appeal must set forth the reasons for appeal and request a hearing, if one is desired. If a hearing is not requested, the decision will be made based on the records of the District, the information in the appeal or request for relief, and any other written information filed with the Board by the Health Officer or District. A copy of any document filed with the Board shall be sent to the other party immediately.
~~*(3-20-97)*~~(____)

02. Appeals Forwarded to Hearing Officer. All appeals shall be forwarded to a Hearing Officer for evaluation. If a hearing has been requested, the Hearing Officer shall designate a time and place for hearing and provide Notice to the appealing party and the Health Officer or District. (3-20-97)

03. Hearings. If hearing is requested, the Hearing Officer shall, upon the appointed date for hearing, conduct a hearing concerning the appeal or request for relief. The appealing party, District staff, interested members of the public and public agency representatives shall be allowed to participate in such hearing. The Hearing Officer may establish time limits or other rules of procedure to expedite hearing of the request. The Hearing Officer shall establish a record of the hearing and shall see that a tape recording is made of the proceedings. Exhibits shall be identified in the record. (3-20-97)

04. Completion of Hearing and Compilation of Record. Upon completion of the hearing and compilation of the record, the Hearing Officer shall prepare a recommended decision which shall be transmitted to the Board for final action. The Hearing Officer's recommendation shall set forth facts found relevant to the decision, legal principles applicable to the recommended ruling, and conclusions drawn from the hearing process. (3-20-97)

05. Board Review of Hearing Recommendations. At its next regular meeting, or as soon as the recommendation can be placed upon its agenda, the Board shall consider the record compiled and the Hearing Officer's recommendation and shall decide the request without further hearing from the Board. The Board may accept the recommendation of the Hearing Officer, reverse the recommendation, or may modify the recommended decision for reasons found in the record. If the Board modifies or reverses the Hearing Officer's recommendation, it shall set forth its reasons for doing so in writing with reference to parts of the compiled record or conclusions drawn therefrom. The Board may also elect to remand the request to the Hearing Officer for clarification or for further hearing to obtain information the Board deems essential. Confirmation of the Hearing Officer's recommendation may be accomplished by Board action, adopting the Hearing Officer's decision as its own. Appeals from Board action may be taken in accord with provisions of section 39-418, Idaho Code. (3-20-97)

~~560~~902.VIOLATION AND ENFORCEMENT.
Violation of any provision of these rules shall be subject to the following enforcement procedures: (3-20-97)

01. Violation of Rules. Any person, association, or corporation, or the officers thereof, violating any of the provisions of these rules shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding three hundred dollars ($300), or by imprisonment in the county jail for a term not exceeding six (6) months, or by both such fine and imprisonment. (3-20-97)

02. Liability of Violator. In addition to fine and imprisonment, any person, association, or corporation, or the officers thereof found to be in violation of these rules shall be liable, by civil action or restitution, for any expense incurred by the District in enforcing this act, or in removing or terminating any nuisance or health hazard. ~~(3-20-97)~~(____)

03. Other Action. Any person, association, or corporation, or the officers thereof shall additionally be subject to civil court action, including an injunction or restraining order, and to such penalties, costs, or fees as may be necessary to compel compliance. (3-20-97)

04. Successive Days in Violation. Each successive day in violation shall be considered a separate offense and shall be subject to ~~*cumulative*~~ individual penalties for each separate offense. ~~(3-20-97)~~(____)

90~~1~~3. -- 999. (RESERVED).